TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1[redacted]

No. [redacted] 1[redacted]6

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

UNITED STATES STEEL CORPORATION ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

VOLUME 13.

VOLUME XIII.

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Erratum.

Page 4957, line 18, should read:

Mr. Dickinson: I object to that as irrelevant and incompetent.

SIXTY-NINTH DAY.

EMPIRE BUILDING,
71 BROADWAY, NEW YORK CITY,

WEDNESDAY, JUNE 4, 1913.

Before SPECIAL EXAMINER HENRY P. BROWN.

Present on behalf of the United States, MR. DICKINSON and MR. COLTON:

Present on behalf of the defendants, MR. LINDABURY, MR. SEVERANCE, MR. BOLLING and MR. REED.

PERCIVAL ROBERTS, JR.,

the witness under examination at the taking of the adjournment, resumed the stand.

DIRECT EXAMINATION (Continued),

By MR. SEVERANCE:

Q. Last night when we adjourned you had just stated the character of the business conducted by the Pencoyd Company, or rather, the substitution of steel for iron in that business. You also stated that you went into the company in 1876 and continued with it until 1900. I wish you would state, Mr. Roberts, in your own way without further questions, the general facts relative to the development of the iron and steel industry during the period in question, from 1876 to 1900, including the substitution of steel for iron and the result of such substitution, changes in the units of production, and all matters that are naturally relevant to the general subject of the development of the industry during that period. That is a rather large question, but I think you understand it.

MR. DICKINSON: What industry is this?

MR. SEVERANCE: Iron and steel.

MR. COLTON: The structural end or the whole thing?

MR. SEVERANCE: The industry as a whole. Mr. Roberts is thoroughly competent, I think.

MR. DICKINSON: I think I will enter an objection to that as irrelevant and cumulative, and unnecessary.

MR. SEVERANCE: Cumulative?

MR. DICKINSON: Yes.

THE WITNESS: As I think I stated yesterday, prior to about the year 1885 all wrought material was the product of the puddling furnace and known as wrought iron. It is true that prior to that date there were two methods of making steel, one known as the Bessemer or pneumatic process, the other the open hearth or Siemens-Martin process. Of course there was a third process, known as crucible steel, but that plays no part in the products I am discussing. Steel prior to that date was used principally for the manufacture of steel rails, and some small lines in addition.

By MR. SEVERANCE:

Q. Previous to what date?

A. 1885. The raw material of the character required in the processes of open hearth and Bessemer was limited in extent, due to the fact that it was necessary to limit the phosphorus in the resulting product of steel, and there was no known method of removing this metaloid during the process of manufacturing pig iron or steel. About the early eighties two Englishmen, Thomas and Gilchrist, made the discovery that it was possible to remove phosphorus from pig iron during the manufacture of steel in either the Bessemer converter or the open hearth furnace by using what was known as a basic lining, the base being lime as distinguished from an acid lining, which would be silica, and their discoveries were announced to the world about the year 1885. This discovery practically revolutionized the iron industry, and by the year 1890 basic open hearth steel had practically supplanted the use of wrought iron for all commercial purposes. In the late eighties the introduction of electricity as a motive power also produced another revolution in the steel industry, so that practically all works had to be rebuilt if they desired to keep abreast of the most recent development of the art. The situation then developed in the late eighties that the independent iron producing plant would either have to be

abandoned or modified for the manufacture of basic open hearth steel. Up to that time our unit of measurement had been a puddling furnace producing four tons of material in twenty-four hours. As against this, our new unit of measurement was an open hearth steel furnace producing some 100 tons of material in twenty-four hours. An economic plant would not consist of less than say ten or twelve of these fifty-ton steel furnaces, as against an economic iron plant containing from ten to twenty puddling furnaces.

Q. You say a fifty-ton furnace?

A. A fifty-ton furnace would have a capacity of 100 tons in twenty-four hours, or ten furnaces would have a capacity of 1,000 tons in twenty-four hours, as against ten puddling furnaces with a product of forty tons in twenty-four hours.

By Mr. Dickinson:

Q. What date are you giving there?

A. About the year 1890. There were a few pioneers in the basic open-hearth business in the United States. Among them I might mention the Otis Steel Company in Cleveland, the Carnegie Steel Company, the Pencoyd Iron Works. These three, I think, were the earliest producers of basic open-hearth steel in the country. As the iron making establishments found——

Mr. Severance: May I interrupt just for one question, and then you go on?

The Witness: Certainly.

By Mr. Severance:

Q. Was there a substantial difference or was there not a substantial difference between the rolling machinery in a wrought iron plant and a steel plant?

A. In the early days there was no difference; that is, as far as the finished material was concerned. An iron plant temporarily in the early stages would buy billets and roll them indiscriminately in with their wrought iron product. The basic process, due to the fact that by its use we were enabled to de-phosphorize pig iron, permitted of the use of any and all characters of material which had not been the case in either the acid open-hearth or the acid Bessemer.

Q. What do you mean by all classes of raw material?

A. We could use pig iron of any quality whatever. It made no difference. The poorest could be used equally as well as the lowest in phosphorus content, as all the phosphorus practically was eliminated in the basic open-hearth furnace. The open-hearth process was originally developed and known as the Siemens-Martin process, or the Siemens-Martin open-hearth furnace. That was a sand or acid lining, a silica lining. The invention of Thomas and Gilchrist was to substitute a lining of magnesite or burned lime for the silica lining.

By Mr. Dickinson:

Q. Do they still use the gas jet?

A. They still use gas, still use silica above the bath of lime.

Q. You said they could use every kind of iron? They could not use iron that had more than five per cent. silicon in the Siemens process, could they?

A. The limit of trouble in the making of our pig iron for steel purposes was the phosphorus content.

Q. Could the gas jets burn out if there was more than five per cent. of silicon in the iron?

A. There is never five per cent. of silicon in any pig iron. That would go then into what we practically call ferro-silicon. There is no commercial pig iron which contains five per cent. silicon. Silicon in pig iron would play no part in an acid furnace, but silicon in pig iron would have effect on a basic lined furnace, but there is no trouble to control your percentage of silicon in your blast furnace.

Q. Do you include foundry iron when you speak of using any kind of iron?

A. Yes, any kind of iron, but we would not use foundry iron, due to the fact that it would be more expensive to produce it in a blast furnace than it would be to produce what we would call basic iron, which has a lower silicon content. That is merely the result of the temperature of the running of the blast furnace. You run your blast furnace at a higher temperature to produce foundry iron from what you do when

you produce what is known as basic iron or iron whose content of silicon is less.

MR. SEVERANCE: Have you any further questions, Judge?

MR. DICKINSON: I think that is all.

MR. SEVERANCE: I suppose this is not strictly the time for cross-examination, but I do not object if you want to ask anything further at this time.

MR. COLTON: It was just in connection with the process of manufacture. That is all.

MR. SEVERANCE: If there is anything further you would like to bring out, you may ask Mr. Roberts about it. I do not object, at all.

MR. DICKINSON: I just want to know if foundry pig iron was used for steel making purposes, for the reasons you have stated.

THE WITNESS: Foundry pig iron could be used.

MR. DICKINSON: I know, but was it used at the time you speak of?

THE WITNESS: It would not be used, because of the fact that it was commercially cheaper to use something else. Foundry pig iron is, as I said a moment ago, the product of a blast furnace, which is run at a higher temperature, carrying a higher percentage of fuel in the burden than in making the lower silicon irons. Therefore it is not economical iron at that high temperature unless you wish to produce what is termed a very gray pig iron, which, when melted for foundry purposes, melts very thin so, when it is cast in the moulds, it will produce a casting of fine finished form. The chemical content, excepting the fact that it has higher silicon, so far as phosphorus is concerned, would be the same as the lower silicon iron produced from the same ores.

A blast furnace running to-day may produce foundry iron, and to-morrow, if it is a wet day, and the temperature of the furnace becomes lower, it produces what would be termed gray forge iron, not basic iron, although the contents of the furnace would be just the same. Have I made that clear, Judge?

MR. DICKINSON: You have answered a great deal more than I intended. I did not intend to interrupt you so much.

By Mr. Severance:

Q. Then proceed with your answer.

A. I think I had reached the situation existing as of the late eighties, when basic open-hearth steel was gradually, or rapidly, I might say, supplanting wrought iron. The wrought iron plants that were of smaller capacity and had insufficient capital or lack of sufficient tonnage to dispose of the product of an economical steel plant commenced purchasing billets and blooms from those who had converted their plants into steel manufacturing ones. This production of billets and blooms was practically a by-product with the finishing mills. In times of activity they had very little surplus product to spare. When not so pushed on finished material, they disposed of part of their steel melting capacity in the shape of semi-finished material. The iron plants purchasing this material found that the same could not be carried on successfully, due to the fact that it required an almost unlimited capital to be locked up in supplies of billets, as finished material required so many different weights of billets and blooms that the stock on hand had to be enormously large; also the chemical requirements of orders required that different grades of steel should be used. This also required a vast amount of material to be carried at all times on hand. Another matter which occurred about that time changed very materially the situation, and that was the introduction of what was known as the Jones mixer. I might say that up to that time the production of all blast furnaces was run out from the furnace in the shape of liquid pig iron and cast in the sand and allowed to become cool. The invention of the Jones mixer was for the purpose of carrying on the production of steel as one continuous operation from ore to the finished product, never permitting the material to become cold until it reached the final economic shape. I do not mean to say that this applies to all finished shapes, but to a cross-section of material at which it would be economical to let the material cool.

Q. May I interrupt? Will you kindly explain briefly what the Jones mixer is?

A. The Jones mixer is a large vessel placed between the

blast furnace and the steel works, in which the product of the blast furnace is run in liquid form, making a large reservoir of fluid pig iron from which ladles are taken in liquid condition, the contents in liquid condition, and used in Bessemer converters or open-hearth furnaces. The advantage of this process was that it reduced the cost of manufacture in this one respect alone by about $1 a ton, which is the cost of re-melting cold pig iron for steel production.

The situation from 1890 on grew more and more acute. Those concerns which had become more or less integrated and had changed their methods from those of iron to steel were continuing their integration to even a greater extent than before, although I would like to say that even prior to the introduction of steel the matter of integration was one of varying degree, even in the manufacture of wrought iron, although there was not the same necessity for it. In those days one man mined ore, another man ran a blast furnace, another man operated rolling mills. The processes were all disconnected.

Q. What about coal and limestone?

A. Coal and limestone were sometimes separate, sometimes controlled by one party, but even in those days there were certain establishments which controlled their material from the ore and limestone up to the finished wrought iron product, so that even in those days iron manufacturers were not on the same basis as regards competition. Those concerns whose output—I speak now as of about the year 1890—those concerns whose output was of a character and of sufficient tonnage, and who controlled sufficient capital to enable them to convert their works from iron to steel, did so, but there were a vast number of those whose character of product was of a less heavy nature, such as sheets, small bars, light plates, etc., who neither had the capital nor the output to warrant them in making, or rendered it possible for them to make, this change. There was also another class of establishments, namely the blast furnaces, who had heretofore supplied the puddling furnace or the rolling mills with their pig iron for making bars. Those concerns found themselves without customers and they in turn were forced to develop a product

which would take the place of their former one. These smaller concerns were buying, as I say, to the best of their ability their billets, blooms and slabs from the larger concerns who were making them in a certain sense as a by-product during the years from about 1890 to 1896.

These revolutions which I have spoken of, due to the introduction of basic open-hearth steel in place of wrought iron, were the fundamental reason for all the earlier aggregations of works which took place about the year 1898 and through that year down to say 1900. Certain of them were integrating, like the Federal Steel and the Carnegie Steel Company, backward to their supplies of raw material and to the extent which thy had formerly been consumers, they to that extent became producers. The other concerns, like the National Steel, were composed largely of blast furnaces that had lost their custom for pig iron and who found themselves compelled to produce, instead of pig iron, billets and blooms for sale to those who had formerly used wrought iron. The Tin Plate, the Sheet Steel, the Hoop, the American Steel & Wire, were composed of concerns who individually were neither able, for want of capital or amount of output, to change from wrought iron or to manufacture steel in sufficient quantities to make it commercially profitable to do so.

Q. In view of what you have just said about these last four companies (you seem to have embodied two answers into one), had the Tin Plate been a manufacturer of wrought iron products, and did you intend so to state by your answer?

Mr. Dickinson: I object to putting the question in that form as leading, and it is improper examination of the witness.

The Witness: The Tin Plate Company had been a consumer and not a producer of wrought iron product, and in fact, the manufacture of tin plate had not taken place in this country until after the introduction of the use of open-hearth steel. So far as I included them in my answer, I meant to state that they individually were unable to produce the raw material from which their finished product was made, but by combining these individual units, they would be enabled to do so economically.

Q. What was the source of the steel used by the American Tin Plate Company? Where did they get the most of it?

A. From the National Steel Company, and before the days of the National Steel Company in the open market from whomsoever might have a surplus of steel melting capacity over and above his own requirements for finished material. For instance, the Pencoyd Iron Works at times were sellers of tin plate bars; but only at such times as they had a surplus of steel over and above their own requirements. This, in the early days, was common in the trade.

Q. Was there any community of ownership between the National and the tin plate companies at that time? Was there or was there not?

A. Those three companies were formed between 1898 and 1900, I think—the National Steel, the Tin Plate——

MR. DICKINSON: Excuse me for a moment, Mr. Roberts. I object to that question as cumulative evidence of a fact proven over and over in the record and undisputed.

MR. SEVERANCE: Is that an objection?

MR. DICKINSON: Yes, it is an objection.

MR. SEVERANCE: I say, is it an objection because you have proved something, for me to prove it?

MR. DICKINSON: You have already proved it.

MR. SEVERANCE: Oh, have I?

MR. DICKINSON: Yes.

MR. SEVERANCE: I do not recall it. Go ahead, Mr. Roberts.

(By request of the witness, the stenographer repeated the last question and answer as follows:)

"Q. Was there any community of ownership between the National and the tin plate companies at that time? Was there or was there not?

"A. Those three companies were formed between 1898 and 1900, I think—the National Steel, the Tin Plate——"

MR. SEVERANCE: I suggest, Judge, that you make your objection either before the witness begins his answer or after he has finished it.

MR. DICKINSON: I started to object once or twice, and with

some asperity you asked me to wait, and I waited until the witness began his answer.

MR. SEVERANCE: Mr. Roberts, please give Judge Dickinson a chance to object before you answer.

MR. DICKINSON: I do not like to have any more friction than I can, and I have tried to avoid it as far as I could.

MR. SEVERANCE: Just give the Judge an opportunity to object, Mr. Roberts.

(By request the stenographer again read the unfinished answer of the witness as follows:)

"A. Those three companies were formed between 1898 and 1900, I think—The National Steel, the Tin Plate——"

THE WITNESS: (Continuing) The Sheet Steel and the Steel Hoop—there were four of them. These four, while under separate incorporations, were known as one group. All of these concerns were dependent for their supply of steel upon the National Steel Company; and this was directly along the same lines of integration as those under which the Federal Steel and Carnegie Steel were working at that time.

Such was the situation as of about the year 1900. Those concerns which did not so integrate or change to steel were rapidly disappearing. The census reports of the United States for 1895 show——

MR. DICKINSON: I object to the witness stating what the census report shows, as hearsay and incompetent.

By MR. SEVERANCE:

Q. You have the census report before you, have you not, Mr. Roberts?

A. I have.

Q. Just produce it. Yoy may use it. That is the official publication that you have in front of you?

A. (Reading) "Department of Commerce and Labor, Bureau of the Census, Bulletin No. 78, Census of Manufactures, 1905, iron and steel and tin and terne plate. Government Printing Office, 1907."

Q. There are merely a few figures that I want to prove from that census report.

MR. DICKINSON: I would like to see what it is.

MR. SEVERANCE: Yes; just look at it, Judge. It is the regular Government publication. There is no need to offer the whole book.

MR. DICKINSON: Is it this page here (indicating)?

THE WITNESS: It is pages 16 and 17.

By MR. SEVERANCE:

Q. Can you state, Mr. Roberts, by reference to this census bulletin to which you have just referred, the number of iron and steel establishments shown by the census of 1900, 1890 and 1880, respectively?

A. Yes.

Q. Can you also give the capital invested in those plants?

A. I can.

Q. Will you kindly do so?

MR. DICKINSON: Objected to as irrelevant.

MR. SEVERANCE: Please give those items.

THE WITNESS: In 1880 there were 992 establishments, with a total capitalization of $228,844,953. In 1890 there were 838 establishments, with a total capitalization of $426,413,902. In 1900 there were 763 establishments with a total capitalization of $608,898,516.

By MR. SEVERANCE:

Q. Will you kindly state by reference to that same bulletin, page 16, the total number of blast furnace establishments in 1880, 1890 and 1900 respectively?

A. In 1880, 483; in 1890, 377; in 1900, 273.

Q. I notice by these figures, Mr. Roberts, that the number of blast furnaces and of the steel works and rolling mills had decreased very substantially during that period. Had the output likewise decreased or had it increased?

A. The output per furnace had increased even to a greater extent than the percentage of reduction in the number of furnaces.

MR. DICKINSON: Are you speaking from the census now in regard to output?

THE WITNESS: I speak either from the census or from the reports of the American Iron & Steel Association.

MR. DICKINSON: I ask if he is speaking from the census.

MR. SEVERANCE: No.

MR. DICKINSON: I object to his answer as not showing the sources of information, and as hearsay.

THE WITNESS: I would name the sources of information as the census reports of the Government, and also the reports of the American Iron & Steel Association for the several respective years.

By MR. SEVERANCE:

Q. From your knowledge of the steel and iron industry, the knowledge you have been able to obtain during the many years you have been in business, are you able to state whether steel and iron production of this country increased between 1880 and 1900?

A. Very materially; I think I stated that yesterday in my testimony as to the increase in output. That was between 1876 and date, but the census report for 1905, I believe, gives the percentage of increase.

MR. DICKINSON: I object to his stating what the census report shows.

MR. SEVERANCE: Never mind, do not state what it shows. We will put it in.

THE WITNESS: The figures are there in the report.

MR. DICKINSON: Show them, if the figures are there.

THE WITNESS: Shall I show them?

MR. DICKINSON: There is no objection to that, subject, of course, to irrelevancy. If you have them here we might as well see what they are. We object to them as irrelevant. You will let us see them after you are through?

MR. SEVERANCE: Certainly.

By MR. SEVERANCE:

Q. Will you read the statement on page 70 of the bulletin for 1905, to which you have just referred?

MR. DICKINSON: That is objected to as irrelevant.

THE WITNESS: (Reading):

"The growth of steel production has been the heaviest of any portion of the iron and steel industry. The product for 1900 shows a gain over that of 1890 of 6,510,348 tons, or 155.9 per cent., an average increase of about 650,000 tons per year.

The product of 1890 shows a gain over that of 1880 of 3,147,271 tons, or 306.3 per cent., an average increase of nearly 315,000 tons per year."

MR. SEVERANCE: Mr. Colton suggests that in addition to the answer to the question, as to the increase between 1880 and 1900, there also be read into the record the following, which appears between the first sentence read by the witness and the statement as to the product for 1890, namely:

THE WITNESS (Reading):

"The increase in the steel production in 1905 was 2,985,592 tons over that of 1900, or 27.9 per cent.; this is an average increase of nearly 600,000 tons per year."

I would just say one word to finish that. Coming down to the year 1900 very many, if not the majority, of those concerns who did not integrate sufficiently to control their supply of raw material failed in business or were abandoned by their owners.

Q. Mr. Roberts, going back to the early days of this period that you have been covering, will you state where concerns like the Pencoyd procured their pig iron?

MR. DICKINSON: Will you make that a little more definite?

By MR. SEVERANCE:

Q. Take it up to 1890.

A. Eastern Pennsylvania, Virginia, Alabama, also some from the Pittsburgh district.

Q. After 1890 where did the Pencoyd procure the bulk of its pig iron up to 1900?

A. It procured a large amount from Virginia and from a local furnace a few miles from the site of the Pencoyd Works, and the local furnace used largely imported ores and some Lake Superior ores; the Virginia furnace of course used local ores; many of the furnaces which had formerly supplied the pig iron for the Pencoyd Works had been abandoned, due to the extinction and failure of their local ore supply.

Q. Where was this local ore supply that had been extinguished?

A. There were a number of them in eastern Pennsylvania and New Jersey.

Q. Was there any Lake Superior ore shipped into the eastern Pennsylvania region prior to 1890?

A. Practically none.

Q. Was there any Lake Superior ore shipped into that region later?

A. Yes.

Q. For what purpose was it used?

A. Used in the blast furnaces.

Q. Was there any Lake Superior ore shipped in there for use in the open-hearth furnaces?

A. Only to a limited extent. It would not be an appreciable quantity.

Q. Do you know of any time that ores were imported into the Pittsburgh district from abroad?

A. Before the development of the basic open-hearth process, while they were still making some acid open-hearth steel, there were importations of Spanish ores and African ores into the Pittsburgh district.

Q. In giving your statement relative to the open-hearth furnaces, Mr. Roberts, I do not think you stated the number of men required to operate an open-hearth furnace.

A. As I think I explained, our units of measurement in the two cases would in the manufacture of wrought iron be a puddling furnace, and in the manufacture of open-hearth steel an open-hearth furnace, for instance, the one having a capacity of four tons in twenty-four hours and the other 100 to 150 tons in twenty-four hours. Of course a plant of one furnace would not be commercially economical. It is difficult to give exactly the number of men or compare the number of men in the two plants because they would be so widely divergent in character, but you might say as a general proposition that basic steel blooms, which would be the equivalent of muck bar, would be produced from pig iron at less than one-half the cost of muck bar, but as to the separation of labor alone from other costs, I would not be prepared to give that or exactly the number of men, but in the manufacture of steel the number of men per ton are vastly less than in the manufacture of wrought iron.

Q. You have testified at some length as to the development

of the art. What is the fact as to whether or not plants become obsolete in the steel and iron industry before they are actually worn out, because of the necessity for replacements and renewals?

A. As a rule the past history of the manufacture of iron and steel has shown very clearly that machinery does not wear out from use, but becomes obsolete from changes and developments which take place from time to time in the art. Hence it is necessary in figuring costs to set up a very ample depreciation fund to cover this constant change which is taking place and which may render, from time to time, perfectly good machinery obsolete, so that it must be destroyed and replaced with other machinery.

Q. You were speaking a while ago about the economic necessity of this integration. Are there concerns of considerable magnitude that have not integrated successfully prosecuted, turning out a certain kind of steel products?

A. Only those in which tonnage plays no important factor whatever. There may be some concerns producing a product of high money value, with very small tonnage, composed of steel, in which integration would play very little part; for instance, the manufacture of wire cloth or wire screen, or something of that character. There are successful concerns to-day who have not integrated in the manufacture of their own steel, but those are of a character where tonnage plays no part. Where you come to a large tonnage, however, or a comparatively large tonnage, I know of no successful concern to-day which has not integrated.

Q. What about the Crucible Steel Company?

A. There is a concern in which tonnage is comparatively small and price high. It is not essential that it should control its raw material because its processes are of such a nature that it renders it unnecessary. It manufactures tool steel, a very special branch in itself, with high prices and comparatively small tonnage.

Q. Does the percentage of the cost that labor that is put on the finished product bears to the total cost have anything to do with the necessity of having plants integrated?

A. Of course labor is a very important item in the manu-

facture of iron and steel, and in proportion as you can integrate and make your process a continuous operation, you will reduce your costs of labor.

Q. How does the percentage of the labor cost in the heavy steel products of these integrated concerns compare with the percentage of the cost in the highly-finished articles that you have instanced, such as wire cloth and others?

A. Labor in highly-finished products, of course, would play a more important part than the labor in the less highly-finished or heavy-finished products. Labor would be the most important cost there.

Q. Rather than the material?

A. Rather than the material, yes; labor per ton.

Q. You stated a while ago that the independent units that went into some of these companies, like the tin plate and others, could not have afforded to integrate to the extent of making their own steel. Will you explain a little more fully why that is, as to the capital necessities, and as to the extent of the raw material they would need?

A. For each one of those independent units to have become of sufficient size to have substituted steel for wrought iron in their manufacture would have made such a stupendous over-production, far beyond the demand, that it would have been an economical absurdity and impossibility. It could not have taken place. The money could not have been obtained. There was not sufficient capital which could have been obtained to produce any such result.

Q. How would it have been if each individual tin plate plant had attempted to produce its own raw material?

A. I make the same answer. It would have been a physical impossibility.

Q. You stated a while ago, Mr. Roberts, that a large number of companies retired from business or were financially unprofitable during this process of evolution in the days before 1900. Were there any periods during that time when the situation in that regard was more acute than at others?

A. It fluctuated somewhat, but the ten year period prior to 1900 had a number of important failures, some of them due to the fact that concerns did not substitute steel for

wrought iron, and others due to want of progressiveness on the part of their owners, so that their plants were not kept abreast of the most advanced state of the art. There were a number of important failures in that time.

Q. Were there any panic conditions during any of that period contributing to that situation?

A. Yes. There was a panic in 1893, and there were a number of failures, due to very considerable destructive competition during that period.

Q. Can you give any examples from your recollection of companies that failed during the ten year period you have mentioned that were engaged in the iron and steel industry, or were financially embarrassed?

A. The Pennsylvania and the Maryland Steel Companies.

Q. Just a moment. They are still in operation, are they not?

A. The Pennsylvania and the Maryland were in the hands of receivers and then reorganized, fresh capital put in. The Catasauqua Manufacturing Company, the Pottsville Iron & Steel Company, the Pottstown Iron Company, the Diamond State Iron Company.

Q. Where were they located?

A. Wilmington, Delaware; the Chester Rolling Mill Company, the Montour Iron & Steel Company. There was a plate mill at Baltimore, I do not recollect the name of it; I recall the works very well.

Graff, Bennett & Company of Pittsburgh; Oliver & Phillips, Pittsburgh, and the Oliver Iron & Steel Company, Pittsburgh.

Q. Was that latter company afterwards reorganized?

A. I think it was, yes.

Q. Can you think of any others?

A. There was what was known as the Superior Rolling Mill Company, of Pittsburgh; I do not recall the exact title of it. There was also the Vulcan Steel Works at St. Louis, an important Bessemer concern making steel rails; and I think there was a concern of the name of James Wood & Company, Pittsburgh. A Rome concern at Rome, New York, the Rome Rolling Mill Company, I think. It is like going into a grave-

yard to dig these things up; this is a great many years ago, but for greater sufficiency I would refer to the Directory of the Iron and Steel Works as of those periods, 1898 and 1896 and along there, giving a complete list of the abandoned works. They were very numerous.

Q. Did the Midvale Company ever get into financial trouble during that time?

A. The predecessor of the Midvale Company of Philadelphia did, William Butcher & Sons. It was afterwards reorganized as the Midvale Company.

Q. Was that during the same period?

A. That was some time prior to the period between 1890 and 1900; it would be prior to 1890.

Q. Did the Passaic Rolling Mill Company ever have any financial difficulty?

A. Yes, they failed.

Q. During that period?

A. About that time; about the latter part of that time. About 1900 they failed.

Q. You have given the ones that you recall. Are you able to say whether there are others that you can not just now name?

A. I am positive of numerous others, but I do not recall the names at this time. There never was a year during that ten year period that there were not numerous failures in the iron and steel trade, with considerable aggregations of capital; I will say they were very numerous, so numerous that probably in some years it would amount to more than 100 failures in that period.

Q. You say some years it would amount to more than 100 failures. How was it in the panic days, following the panic of 1893? Were there many or few failures?

A. As a result of that panic, failures were numerous.

Q. You recall the panic of 1907? There has been a good deal of testimony about it in this case.

A. I recall it very well. I also recall very well the panic of 1893. They were very similar in the effect upon manufacturing concerns. I recall in the panic of 1893 we had to buy cash to make our payrolls. We could not get the cash from

the banks. They acted entirely in a similar manner to their actions in the panic of 1907.

Q. That is, the banks did.

A. The banks did. We went in the open market and bought cash for our payrolls. The banks would not furnish it; although we had sufficient money on deposit to cover our payrolls, we could not get the cash, and as a result, just after 1893, I think the following year probably, there were more failures in the iron trade than in any succeeding year in that ten year period.

Q. Were there any failures in the iron and steel trade caused by the bankers' panic of 1907, so far as you know?

A. I recall no failure of moment in the iron and steel trade since 1907 excepting that of the Central Iron & Steel Company of Harrisburg, Pennsylvania, which I think went into the hands of a receiver within the past two years.

Q. That was a case of defalcation, wasn't it?

MR. DICKINSON: I object to that as irrelevant & incompetent

THE WITNESS: I am not familiar with the causes, but it has been within the past two years.

By MR. SEVERANCE:

Q. Then the results to the iron and steel industry following the panic of 1907 were in no way comparable to the results that followed after the panic of 1893; is that true?

MR. DICKINSON: Objected to as leading.

THE WITNESS: That is a correct statement.

By MR. SEVERANCE:

Q. Mr. Roberts, was there at any time any change in the method of placing rail orders, if you know, by the railroads?

A. Yes. During the presidency of Mr. Cassatt of the Pennsylvania Railroad, about the year 1900, he inaugurated a system for the Pennsylvania Railroad of making his purchases yearly at about the end of each calendar year for the succeeding one, and also proportioning his orders among the various rail mills, somewhat along the lines of their respective freight tonnages; not exactly accurately in regard to the latter point. This was done partially from the fact that

they established a system of yearly budgets for their ensuing year's work, and also from the fact that they believed it policy——

MR. DICKINSON: I object to the statement of any belief of the policy of the railroad company as incompetent and hearsay.

By MR. SEVERANCE:

Q. Go ahead.

A. And they did it for the reason that they desired, as far as possible, to give uniform treatment to manufacturers along the lines of their road. Prior to that time purchases of rails were made from time to time as requirements might warrant; many of the other leading railroads of the country, upon the inauguration of this policy, pursued the same, so that from that period on rails have usually been bought within a very few months covering the entire subsequent year. This is a distinct change from the methods of handling this business prior to 1900.

Q. What effect, if any, did that new system have upon the price of rails as regards uniformity of the same through the year?

MR. DICKINSON: That is objected to as irrelevant, calling for an opinion of the witness, and incompetent.

THE WITNESS: Of course a railroad purchasing its rails for a year's requirements establishes a single price for that period of time. There is also another reason since 1900 for the maintenance of a uniform price.

By MR. SEVERANCE:

Q. And what effect upon the price paid by other companies was occasioned by this initial order made by the Pennsylvania or some other large system?

A. It would of course establish a price, but bear in mind in this discussion of a price, a continuing price, for rails since 1900 or 1901 of $28 per ton is theoretical and does not represent——

MR. DICKINSON: I must remind the witness he is going beyond any question that has been asked him, and volunteering statements.

By MR. SEVERANCE:

Q. I will ask you another question. Then as I understood your answer, the purchase by the one large company would make a price for the others?

A. That is correct.

Q. That is correct?

A. That is correct, provided the others purchase the same class of rails under the same specification.

Q. So that the net result of the whole thing is that that would make the price for the year for the rails of that particular specification?

A. That is correct.

Q. There has been a good deal of testimony in the case with reference to a uniform price of $28 a ton for rails over a period of a number of years. What is the fact as to whether or not that is the price that has been paid by the different roads, and if not, what variation has there been?

A. $28 a ton is what might be termed a card price, or a foundation price, from which other prices may be established, varying with the specifications, chemical requirements, etc., of the purchaser. The actual sales of rails made during this period were not at a uniform price of $28, or any other uniform price, but have varied from time to time, as I have always stated, due to the nature of the requirements of the consumer, and have probably in the majority of cases varied between $28 and $34 a ton. This $28 basing price has remained as it has for another reason than those already given since the year 1900, due to the fact——

MR. DICKINSON: Are you speaking of the period since 1900 now?

THE WITNESS: I am. As I said, it has remained as it has for another reason than those already given, since the year 1900, due to the fact that the rail business is a peculiar one, not comparable with any other line of steel production. The sellers are few, the purchasers are comparatively few, and the use is strictly confined to one purpose. Between the producer and the consumer it is essentially a matter of bartering a product of the steel maker for the product of the transportation company, namely transportation.

Prior to 1900 there was an opportunity to bargain for transportation, which was at no definite, fixed price. Since 1900, by governmental regulation, railroads can no longer trade in transportation at varying figures. Therefore the basing price of steel rails, which is a theoretical point of departure, has remained at the same figure; but actual sales have been fixed at varying prices in accordance with specifications.

Q. In what year was the $28 base rate first applied? In 1900 or 1901?

A. In 1901, I think; but the inauguration of the yearly purchases I think took place in the year 1900, or soon after Mr. Cassatt became president of the Pennsylvania railroad, which, I think, was in that year.

Q. Does the Pennsylvania Railroad, Mr. Roberts, of which you are a director, use upon its main line any Bessemer steel rails?

A. Not at present.

Q. Do they have rails of some particular specification other than the standard specifications, or not?

A. For some years past they have used open hearth steel rails. Bear in mind that the price of $28, the uniform price, applies only to what is termed standard Bessemer rails, which was a term introduced a number of years ago, after the issuance by the American Society of Civil Engineers of what they termed standard specifications for Bessemer steel rails. This was adopted by some railroads of the country, but not by all, and when we speak of standard Bessemer steel rails, it refers to rails under those specifications of the American Society of Civil Engineers.

(By request of Mr. Severance the stenographer repeated the last question, as follows:)

"Q. Do they have rails of some particular specification other than the standard specifications, or not?"

THE WITNESS: As I said, their requirements are now for open hearth rails exclusively.

By MR. SEVERANCE:

Q. Are there different specifications of open hearth rails used by different railroad companies?

A. There are, and they are subject to different prices, varying according to chemical composition, mechanical drop tests, and so forth.

Q. How are those prices arrived at as between the railroads and the rail makers, so far as the matters have come under your observation?

A. By conference and consultation.

Q. Between whom?

A. Between the maker and the consumer. I can recall an instance during the time I was not connected with the United States Steel Corporation, but was a director of the Pennsylvania Railroad, when I once came with the President of the Pennsylvania Railroad to New York and conferred with officers of the subsidiary companies of the United States Steel Corporation in regard to prices for rails, and a general discussion of the specifications which we were then introducing on the Pennsylvania Railroad was had. The price which had been asked for these rails the railroad officials thought too high. We discussed the proposition, and they named us a lower figure than that first asked. That was in about the year 1908.

Q. What year did you become a director of the Pennsylvania Railroad, if you remember?

A. I think in 1906 or 1907.

Q. Are the specifications of the Pennsylvania Railroad the same year after year or do they vary?

A. They vary from time to time as their engineers may believe by changing them they may obtain a more uniform and safer material.

Q. Do the prices remain the same or do they vary when the specifications vary?

A. They vary with the specifications.

Q. During the time you have been a membor of the Board of Directors of the Steel Corporation, either during your original connection with the company in 1900 to 1902, as you have mentioned, or during your more recent connection, has or has there not been any agreement or understanding to your knowledge between the Corporation or its subsidiaries and other manufacturers of rails as to the maintenance of the price of rails?

MR. DICKINSON: Do you mean from his knowledge, so far as he knows?

MR. SEVERANCE: I cut that out. I changed my form of expression.

MR. DICKINSON: I would like to understand what you mean by that.

(By request the stenographer repeated the pending question.)

MR. SEVERANCE: Isn't that clear?

MR. DICKINSON: No; it is not.

MR. SEVERANCE: What is the matter with it?

MR. DICKINSON: It is indefinite because it does not indicate whether to his knowledge he knows it or whether he is speaking so far as his knowledge goes.

MR. SEVERANCE: That is too deep for me.

MR. COLTON: That is quite clear; a man may know a thing and yet not know anything about it at all.

MR. SEVERANCE: That may be the kind of knowledge you have, but that is not the kind Mr. Roberts has.

MR. DICKINSON: I object to the question as indefinite.

MR. SEVERANCE: All right; go ahead.

THE WITNESS: I have no knowledge of any such.

By MR. SEVERANCE:

Q. Have you had any knowledge of any such arrangement at any time during that period?

A. I never did have.

Q. Have you any knowledge of the price of rails paid by the various railroads to manufacturers being arrived at during that period in any other way than the way you have testified to as between the Pennsylvania Railroad and the Steel Corporation, namely, by negotiations between the consumer and the maker?

A. I have no knowledge of any other arrangement whatsoever.

Q. Mr. Roberts, which is the more important to a railroad in these days, considering the class of equipment that runs over the rails, and the speed of the trains, the character of the rails, or the price?

MR. DICKINSON: That is excepted to as irrelevant.

THE WITNESS: I only speak from positive knowledge of the railroad with which I am connected, namely the Pennsylvania Railroad, but I have a general knowledge of the situation throughout the country, from the fact that very recently I was a member of the committee of the American Society of Civil Engineers for the change and amendment of the society's specifications for steel rails, and while on that committee I came in contact with the chief engineers of most of the railroads in the United States, and from that connection, as well as my own with the Pennsylvania Railroad, I should say that the universal thought of the railroad operating officials of this country at the present time is the question of quality and not of the price of rails, which is shown by the large percentage of rails at the present day——

MR. DICKINSON: Objected to as argumentative.

THE WITNESS: (Continuing)—which are sold above the price of $28 a ton, or which are sold to special specifications other than those which would be termed standard Bessemer rails, the output of open hearth steel rails today at the higher figure exceeding the output of Bessemer rails.

By MR. SEVERANCE:

Q. Has or has not the proportion of open hearth rails purchased by railroads increased during the past ten years?

A. Very largely; the output of open hearth steel rails today exceeds that of the Bessemer rails.

Q. How was it at the time the Steel Corporation was organized?

A. Practically all Bessemer, but even then under varying specifications.

Q. Did those varying specifications as to Bessemer rails make any difference in the price?

A. It did, but to what extent I am not prepared to give figures.

(Whereupon a recess was taken until two o'clock P. M.)

AFTER RECESS.

PERCIVAL ROBERTS, JR.,

the witness under examination at the taking of the recess, resumed the stand.

DIRECT EXAMINATION (Continued),

By Mr. Severance:

Q. Mr. Roberts, there was one question I neglected to ask you this morning relative to the contrast between the situation in the days of wrought iron production and the succeeding era of steel production. What was the fact as to whether it was feasible in the operation of puddling furnaces to conduct a continuous operation, not permitting the metal to cool?

A. In the production of wrought iron it was not possible to integrate or to make a continuous operation to any such extent as was possible in the manufacture of steel. In fact, the operation of producing the wrought iron was a sequence of entirely disconnected operation, whereas the success of modern steel making is dependent entirely upon a continuous operation. It is essential in one case to the commercial success of steel making, whereas in the other case it was in no sense essential, and such integration as took place affected the industry only to the extent of some reduction, possibly in the cost of transportation.

Q. You testified yesterday that upon the organization of the United States Steel Corporation you became a director and member of the executive committee. What were the duties of the executive committee in general? I am not asking you what they are stated to be in the by-laws, but, as a matter of fact, what classes of business did they consider and act upon?

A. The executive committee were salaried officers and the committee was composed principally of the former presidents of the subsidiary companies. The purpose was somewhat on the same lines as a cabinet. They were supposed, each one, to be an expert in his own individual lines, and that they should meet daily for consultation and advice to the presi-

dent as might be required. They all had individual offices in this building and were supposed to be in daily attendance.

Q. What classes of matters were submitted to them for consideration?

A. Policies in regard to manufacture and such advice as might be advisable to give to the officers of the subsidiary companies through the president of the United States Steel Corporation. They also passed on various propositions and made recommendations to the finance committee which would require the expenditures of money.

Q. What, if anything, did they have to do with the acquisition of additional facilities or plants or ore bodies?

A. They from time to time passed upon the same, and if it required an expenditure of money, they made recommendations to the finance committee of the Steel Corporation in regard to the same.

Q. Suppose that a proposed expenditure was not deemed by the executive committee desirable, would that go to the finance committee at all?

A. It would not.

Q. Would their decision be final?

A. The decision would be final by the executive committee.

Q. What, if anything, did they have to do with reference to formulating the policies of the company in relation to trade or the places where trade should be pushed or carried on?

A. All such policies would come before them for review, and they would pass upon them.

MR. SEVERANCE: I would like to have this marked for identification.

(A book containing the executive committee meeting minutes of the United States Steel Corporation was marked temporarily, for identification purposes, "Defendants' Exhibit 64 a.")

By MR. SEVERANCE:

Q. I show you Defendants' Exhibit 64, a, entitled "United States Steel Corporation, executive committee." Do you recognize that book?

A. I do.

MR. DICKINSON: What period does that cover?

A. It begins with the organization of the Corporation, April 9, 1901, and runs down until the committee was discontinued, June 9, 1903.

MR. DICKINSON: Are you going to offer that in evidence?

MR. SEVERANCE: No. I will call attention to certain things. You have placed in evidence, Judge Dickinson, a number of the entries in this book; they are in your Government exhibits. I want to call attention to certain entries there of meetings at which Mr. Roberts was recorded as present.

MR. DICKINSON: The same ones that we called attention to?

MR. SEVERANCE: Some of them are and some of them are not.

MR. DICKINSON: I will object to your calling his attention to anything we have not called attention to.

MR. SEVERANCE: Yes, of course, but I want to have the book identified, so that I can direct his attention to certain matters and examine him about them, meetings at which he was present.

By MR. SEVERANCE:

Q. What is the book?

A. The book is composed of notes made of business brought before the Executive Committee at its various meetings, and the action taken in regard to same.

Q. Notes made at the time?

A. Notes made at the time by a clerk.

Q. And typewritten afterwards? He did not take them on the typewriter, did he?

A. No.

Q. These are minutes you have been looking over with me, as to certain matters contained therein?

A. They are notes, yes.

Q. I understand. They are not signed by the Secretary?

A. No.

MR. DICKINSON: How are they entitled?

MR. SEVERANCE: This is entitled "Executive Committee meeting held April 9, 1901." That is the first, and "Subjects discussed."

MR. DICKINSON: And on the title page?

MR. SEVERANCE: The title page, "United States Steel Corporation, Executive Committee."

By MR. SEVERANCE:

Q. These minutes, so far as appears from them, were not read and approved at subsequent meetings. What is the fact as to that, if you remember?

MR. DICKINSON: Objected to as immaterial and irrelevant.

THE WITNESS: At the meetings which I attended during the year I was a member of the executive committee there was present a clerk who made memoranda of various matters brought before us. The meetings were informal in character. There was considerable discussion took place in regard to various subjects, and the clerk made notes of the topics which we considered and the actions which we took in regard to the same.

Q. I call your attention to the notes of the meeting under date of April 23, 1901, appearing at page 31; on the margin it is entitled "Canadian business and trade relations in foreign countries," and I will ask you if you will read into the record the entry there appearing at the top of that page.

MR. SEVERANCE: That is the same meeting from which you introduced a quotation.

MR. DICKINSON: Has that been introduced in evidence?

MR. SEVERANCE: Not that particular entry. You introduced the following.

MR. DICKINSON: The one he is going to read has not been introduced?

MR. SEVERANCE: No.

MR. DICKINSON: We object to it as incompetent and irrelevant and self-serving.

MR. SEVERANCE: Read that, Mr. Roberts.

THE WITNESS: Shall I read the margin?

MR. SEVERANCE: If you please, and that entry.

THE WITNESS (Reading):

"Canadian business and trade relations in foreign countries. Mr. Roberts called for opinions of the committee regarding the policy of the Corporation respecting business in

Canada and foreign countries. Mr. Roberts stated that the German and Scotch mills are cutting into the Canadian business and it is a question whether it would be policy to retain grip on the trade or relinquish it altogether, and endeavor to take it up when conditions there are better. The Chairman suggested that it would be well to keep in business enough to maintain trade relations, and keep your foothold so as to be in a position to do business in the future. Mr. Converse believes in pushing the foreign trade even if there is little money in it now, and we will have all we can do at home, because there will come a time when we will need the business badly. Mr. Roberts pointed out that giving up your trade relations meant a great deal of missionary work to be done to bring it back, and that the cost of maintenance would pay. It was the sense of the committee that it does not favor withdrawing trade relations in foreign countries."

By MR. SEVERANCE:

Q. Do you recall that discussion at that time?

A. I do.

MR. DICKINSON: Did he give the date?

THE WITNESS: This is April 23, 1901.

By MR. SEVERANCE:

Q. That is the month the corporation was organized?

A. Yes.

Q. Who is meant by the Chairman, who was Chairman of the committee at that time?

A. Judge Gary.

Q. Do you recall that the sense of the committee was as stated in that minute?

A. I do.

Q. And from that time what was the policy adopted and carried out by the United States Steel Corporation with reference to continuously or otherwise engaging in foreign trade?

MR. DICKINSON: I object to his stating the question of policy; it calls for a question of fact, and not a conclusion of the witness.

THE WITNESS: Shortly after the formation of the Steel

Corporation, the executive committee had before it the question of what action the Corporation should take to develop and maintain the foreign trade. My own individual thought and decision in the matter was, and I urged at various meetings that we should, in order to maintain and increase our foreign trade, keep a foothold at all times in foreign markets, as distinguished from the practice which had hitherto been adhered to, of selling temporarily and then entirely withdrawing from time to time. This was agreed to by all the gentlemen who were members of the committee, and was put in practice on the start of the Corporation.

Q. I call your attention, Mr. Roberts, to a minute under date of April 11, 1901. That is a meeting of the executive committee of that date, a portion thereof appearing on page 14, under the heading of "foreign business." The Government introduced a portion of those minutes of this meeting, and I will ask you to read into the record this entry under the head of foreign business.

MR. DICKINSON: We object to reading any portion not introduced by the Government as being incompetent, irrelevant and self-serving, the Government having introduced what it did as an admission of the parties against interest.

By MR. SEVERANCE:

Q. Go ahead, Mr. Roberts.

A. Do you want me to read the date of the meeting, or have you had that?

Q. Yes; April 11, 1901. I have stated that in my question.

A. (Reading):

"April 11. Foreign business. At the suggestion of Mr. Converse it was recommended that the president of this company obtain information from the presidents of the constituent companies in regard to the manner in which they conduct their foreign business, and that this information might give particularly a list of the representatives at the different points, warehouses maintained, if any, and the expense of representation, etc."

Q. That was a meeting apparently two days after the first

meeting of the committee, the first meeting being on the 9th and this being on the 11th. Do you recall that matter coming up in that way from Mr. Converse?

A. I could not say at this time that I recall that actual incident, but I do know that those questions arose frequently at the very start of the Corporation.

Q. I now call your attention, Mr. Roberts, to the minutes of a meeting of the executive committee under date of May 9, 1901, extracts from the minutes of which meeting have been introduced by the Government. I will ask you to read the entry therein on pages 57 and 58 under the head of "Organization for Management of Sales Department of Foreign Business."

MR. DICKINSON: One moment. Is that a part of the same subject matter we introduced a part of?

MR. COLTON: No; it is not the same subject matter.

MR. DICKINSON: We make the same objection as formerly.

THE WITNESS: (Reading):

"Organization for Management of Sales Department of Foreign Business. The president informed the committee that he has a report from the sub-committee appointed by him to consider the subject of the sales departments in foreign countries. Their recommendation was that this branch of the business should be controlled by a standing committee of representatives of each of the companies interested who should handle the business as heretofore, save that Mr. Millard Hunsiker should be made chairman of the committee and be vested with power to decide any matters of difference which may arise in the committee from time to time.

"The preceding was the plan in a general way, and the matter was laid over for further discussion at the next meeting.

"The president offered the suggestion that it might be well to have a chairman of the sales representatives in New York. It was further suggested concerning the foreign business that the National Tube, American Steel & Wire and Bridge Companies' sales departments be consolidated in one office in London as far as may be practicable and that some similar plan be pursued with reference to the Carnegie, Illinois and National Steel Company."

By MR. SEVERANCE:

Q. Do you recall that action being taken at a meeting at which you were present?

A. I do.

Q. At about that time?

A. I do.

Q. Mr. Roberts, I call your attention to an entry appearing on pages 66 and 67 under date of May 28, 1901, two p. m., the heading being "Export Business as to Selling Agents," and will ask you to read that entry in the record, and I call attention to the fact that the entry immediately succeeding is copied in the Government exhibits, the entry of the same meeting.

MR. DICKINSON: I make the same objection.

THE WITNESS: "Export Business as to Selling Agents. The president presented a report dated May 28, 1901, addressed to him by Messrs. H. P. Bope, Millard Hunsiker, J. W. Downer, and J. A. Farrell, composing a committee heretofore appointed for the purpose of recommending some plan or basis on which the export business of the subsidiary companies should be conducted. This report embodied the following recommendations:

"1. That the business of the Illinois, Lorain, National and Carnegie Companies be consolidated in one office in London and be in charge of Mr. Hunsiker.

"2. The American Steel Hoop Company: That unless there are conflicting arrangements pending here the business of this company be divided as follows: Mr. Hunsiker to have control of the bar portion and of the heavier products, and that the American Steel & Wire Company take charge of the hoop and band business.

"3. That the sheet and tin plate business be given in charge of the American Steel & Wire Company with the power of enlarging to export business in these lines.

"4. That the business of the American Steel & Wire Company, the National Tube Company and the American Bridge Company remain in practically the same channels as now.

"5. That representatives of the four divisions given do form a committee for the purpose of general consolidation

but with the understanding that such committee is not to interfere with the management of the details of the different companies. That for such purpose these companies should be housed in one building as quickly as possible.

"6. That with regard to the location of the several export offices to handle the sale of the different products in this country, it is advised that this matter be left with the party in charge of sales.

"7. That sales abroad be confined as largely as possible to finished products."

That ends this report. "There was some discussion over this report, and it was finally voted that it be approved after adding thereto the following:

"The representatives of the selling departments should be advised that the policy to be pursued is to maintain our export business under all circumstances, and to increase the same when expedient; that the quantities to be sold from time to time should depend upon circumstances and conditions of trade and the representatives should keep in close touch with the presidents of the subsidiary companies as well as with the president of this company. The idea being that our export trade is not for the purpose of disposing of surplus products from time"—evidently something omitted here—"and thereby make the business to a certain extent a temporary one, but that it is the intention to supply at all times as large a market as our facilities will permit. It was recommended by vote of the committee that a copy of the report of the special committee with the preceding addenda be handed to the members of the export committee, and that each of the subsidiary companies be thoroughly advised what the general policy is to be." There is evidently a word left out.

MR. SEVERANCE: The words "to time" evidently are left out.

By MR. SEVERANCE:

Q. Mr. Roberts, do you recall being present when that matter was discussed that is therein set forth?

A. I do, very clearly.

Q. Was the action taken as shown in that minute that you have just read, that conclusion arrived at?

A. It was, and the export business was reorganized along those lines, consolidating some of the companies and bringing them all into one office in London. I know that from my own knowledge, because I visited that office personally.

Q. Up to the time that you left the Steel Corporation in 1902, or since you have returned to the Steel Corporation, have you known of any departure from the policy therein laid down as to the extension and continuous maintenance of foreign trade?

A. So far as I know, that policy has been maintained since the date of that meeting, at all times.

Q. Previous to the time the Pencoyd Company went into the American Bridge Company, had the Pencoyd Company carried on any foreign business?

A. We had from time to time exported fabricated material, but these were isolated instances, and we made no continuous attempt in the matter. This was due to the fact that our lines of goods were not diversified, and we were not warranted in maintaining so extensive an organization as would have been necessary. For a few years prior to 1909 we maintained an agency in London for Great Britain and their colonies. At one time we had an agency in Japan, but as I say, our exports were isolated instances. 1875

Q. Did you maintain foreign warehouses?

A. No.

Q. Did the Bridge Company?

A. No.

Nor did the Bridge Company maintain any agencies other than those of the A. & P. Roberts Company, which were in existence at the time of the formation of that company.

Q. You spoke of an agency in Japan. Did you maintain an independent office in Japan, or how was that agency carried out?

A. No; it was a commission agency which existed for a few years, and then finally was abolished, and the business was conducted through a Japanese firm of bankers in New York City.

Q. How were you able to get into the Japanese business at all?

A. By making designs for bridges which were superior to those which the Government of Japan had adopted some years prior for its railroad work, which had originally been made by English bridge builders. They substituted the American designs, and based their bridge specifications on American practice. That enabled us to compete successfully against the British builders.

Q. Was that a large business or a small business—the Japanese business.

A. It was not compared with our total output a large business. It was comparatively small.

Q. Was it continuous or intermittent?

A. It was intermittent. Usually our foreign contracts were something of a peculiar nature which enabled us to reach those foreign markets and it was different from a continuing trade where your goods were offered freely at all times. For instance, we had a contract to build a bridge for Lord Kitchener across the Atbara River, to enable the British troops to reach Khartoum. The British builders wanted two years to build the bridge, and we shipped and erected it in a few months. As I say, however, we could make no continuous attempts unless something of this kind occurred, due to the fact that we did not have a sufficient diversity of products to enable us to maintain agencies and to supply foreign markets with a sufficient variety of goods.

Q. What advantage, if any, did the Steel Corporation possess after its organization in getting into and continuing in the foreign business, over other companies?

A. It had all the advantages which a large department store would have as compared with those in each individual line of business which it might comprise. It was at all times able successfully to push its foreign trade, due to the carrying of a complete line of goods, so that if a man required a specification embracing a large variety of material, he could go to that agency or warehouse and obtain his entire requirements. It was purely a department store proposition.

Q. Did the possession of this diversified line of business make it possible to maintain agencies which could not have been maintained by parties with only a single line to sell?

A. That is what I mean to say, that the overhead charges were so distributed by this diversification of product that it was possible to maintain those agencies, which would have been impossible if the line of material had been more restricted, due to less frequent sales.

Q. Mr. Roberts, I call your attention to the minutes appearing in this book on pages 17 and 18, under date of April 12, 1901, three days after the first meeting, the heading of the minutes being "Plan to obtain sundry data regarding the operations." You are reported as present at that meeting, and I will ask you to read that entry into the record.

MR. DICKINSON: Is that a part of any that we introduced?

MR. SEVERANCE: I am not sure that it is.

MR. COLTON: It is not a part of the subject matter.

MR. SEVERANCE: I have no memorandum that you have introduced anything from that meeting, so you had better make your objection on the assumption that you have not.

MR. DICKINSON: Objected to as incompetent and self-serving.

THE WITNESS: (Reading):

"Plan to obtain sundry data regarding the operations. The president proposed to the committee for consideration that he appoint a committee of three to gather certain data. First, see where freights can be saved in delivery of material, cleaning up of scrap in big lots, shipment of material, and from what mills, as well as the solving of the many problems of that kind that are likely to arise. Second, establish a bureau of comparative costs, to take up the compilation of costs and investigations as to why costs are good and bad. Third, have some man who is capable of reporting to this committee as to the best place to make renewals, make improvements, and so forth. It was moved and seconded that the president of this company be authorized to arrange for the appointment of a committee in accordance with the suggestions outlined by him in the above plan."

By MR. SEVERANCE:

Q. What was done, if anything, relative to the establish-

ment of this bureau of comparative costs and how soon was it done?

A. That was put into effect immediately, and it was the custom to furnish each member of the Executive Committee monthly with these comparative cost sheets; as to the other matters, they were reported to the president, who from time to time brought them before the committee for recommendation.

Q. You say these costs were submitted to the executive committee once a month?

A. They were monthly cost sheets.

Q. To whom else were they exhibited?

A. They were also put into the hands of the operating officials of the various subsidiary companies, so that monthly they might see what rank their individual works took in reference to all other works of the subsidiaries of the Steel Corporation, and they were ranked in merit according to these monthly reports.

Q. What was the result of thus exhibiting to the respective heads of the departments these comparative cost sheets?

A. We found very soon that those works which at the start seemed to have been comparatively high were soon able by analysis of these figures to reduce their costs, in various respects, which proved extremely beneficial so far as the operations of the plants were concerned.

Q. Can you give us any illustrations of the character of improvements that were brought about in this way?

MR. DICKINSON: That is objected to as irrelevant.

THE WITNESS: Well, only in a general way.

By MR. SEVERANCE:

Q. But you were advised of the results?

A. We saw the results from month to month from the various reports.

Q. Did or did not this system of exhibiting to the various heads of departments comparative cost sheets result in any rivalry among the various mill managers?

MR. DICKINSON: Objected to as irrelevant.

THE WITNESS: It did; it inaugurated a system of healthy competition between them, with very beneficial results.

By Mr. Severance:

Q. You testified this morning relative to the situation as to the ownership of ore, blast furnaces, etc., in the old days, that is, as to their being in individual ownership. What in your opinion should be the policy of a large corporation like the Steel Corporation, or Jones & Laughlin, or the Pennsylvania, or any of these other large steel manufacturers, as to maintaining an ore reserve?

A. It is absolutely necessary for a modern steel-making establishment to provide itself with a large ore reserve, first, to enable it to have a sufficient variation of quality of ore to at all times maintain a uniform quality of its finished product. It is also necessary to have a large ore reserve to protect that portion of its capital which is invested in manufacturing establishments, and which in no wise is protected by any extinguishment funds which may be set up to provide for the extinguishment of its ores.

Q. Will you explain that a little in detail, why those funds were not protected?

A. The share capital invested in that portion of its business which embraces purely its manufacturing plants—its only protection is the successful life of these plants, rendered possible in having a supply of ore for a number of years ahead, in my opinion not less than fifty.

Q. You mean fifty years?

A. Yes. Now, of course, in raw material you are dealing with your principal account and not income; your manufacturing is purely an income proposition, as your raw material proposition is one of the extinguishment of principal. Now, funds which may be set up to provide for the extinguishment of that principal so far as raw material is concerned does not protect the share capital invested in your purely manufacturing business. Where such protection has not been given even in old times there is a continuous record of abandoned furnaces due to the extinguishment of their supplies of raw material. Therefore it is, from the standpoint of scientific shop management, from the standpoint of conservation, absolutely necessary to maintain and protect yourself with a supply of raw material sufficient to last for a number of years,

and also to continually keep purchasing fresh supplies as those supplies heretofore used become exhausted. At no time would it be good business judgment to permit that supply to decrease to any appreciable extent.

Q. Does your opinion that you have just given as to the necessity of a fifty-year reserve of ore apply also to coal?

A. It would apply to all raw material, all natural resources which might be necessary for the production of your final finished product.

Q. Among which is coal?

A. Coal, limestone, ore, or any other natural resources or products of nature.

Q. Do you happen to know, Mr. Roberts, whether or not, in the opinion that you have just stated, you reflect the views of other steel manufacturers than those connected with the United States Steel Corporation?

MR. DICKINSON: Objected to as calling for the opinion of the witness and of others, and as hearsay.

THE WITNESS: All the modern steel corporations have adopted this policy, and they are all protected to the extent that I have suggested.

By MR. SEVERANCE:

Q. You mean all the others outside the Steel Corporation?

A. All modern steel corporations. I speak of all as distinguished from the United States Steel Corporation.

Q. That is what I say; you are speaking of the others?

A. All modern corporations.

Q. While you were a member of the executive committee during 1901 and 1902 did there come before that committee for action the question of acquiring additional ores from time to time?

A. There were a number of propositions which came before the executive committee during that time in regard to the securing of additional ore properties.

Q. In acting upon those various propositions whether they were accepted or not, upon what was the conclusion and action of the committee based?

MR. DICKINSON: Objected to as irrelevant—the minutes

are the best evidence—and calling for the action of others, and based on their mental conclusions, and incompetent.

THE WITNESS: Each proposition was considered individually, and action was taken based on its merits; and as to whether the nature of the material was such as would make it advisable for our purposes or manufacturing purposes to secure it. Some were turned down; some were accepted.

By MR. SEVERANCE:

Q. Did the matter of securing a monopoly or preventing a competitve corporation from securing any of these properties have anything to do with your action?

MR. DICKINSON: Objected to as incompetent and a self-serving statement.

THE WITNESS: Never.

By MR. SEVERANCE:

Q. I call your attention, Mr. Roberts, to a meeting under date of April 22, 1901, appearing in Exhibit 65 for identification, at which meeting you seem to have been present, and I will ask you to read into the record the entry therein appearing under the head of "Antikokan Mines."

MR. DICKINSON: Excepted to as irrelevant, incompetent and a self-serving statement.

THE WITNESS (Reading): "This is a hard ore mine in Canada, cost now $325,000, in payments extending over three years. It is in a new region on the north shore of the lake in Canada. There will be about 120 miles haul to water. It is stated that the Lackawanna people desire to buy it. Upon the question being submitted to vote, the result was the chairman, Mr. Schwab, Mr. Roberts, Mr. Converse and Mr. Reid voted in the negative. Mr. Edenborn was in the affirmative. Mr. Edenborn thought the price was low, and it was a valuable property.

"Mr. Reid does not feel like making these purchases now, and Mr. Roberts believes in going slowly, but is not sufficiently informed. He votes no. Mr. Schwab thinks that if we accept this now, it will serve to advance prices on similar propositions, and it would be good policy to turn it down. The

chairman suggested that the president decline the proposition providing a final answer must be given now, but that the option be extended for four months for further examination, which was approved by the committee."

Q. Do you recall the matter therein stated?

A. I do.

Q. And do you recall whether or not that property was purchased?

A. It was not.

Q. I call your attention to an entry of the Executive Committee meeting under date of June 25, 1901, page 82. You appear to have been present at that meeting, and I will ask you to read the entry therein, under the head of "Rainey Coke Proposition."

MR. DICKINSON: That is objected to as incompetent, irrelevant and self-serving.

THE WITNESS: (Reading):

"The chairman stated that someone claiming to know him, and who claimed to have absolute control temporarily of the Rainey Coking proposition, which consists of 7500 acres of Connellsville coking coal, well improved, having 2800 ovens, would sell the property to this Corporation for $20,000,000 common and $20,000,000 preferred stock of this Corporation; the proposition to be treated in the strictest confidence.

"Upon motion it was voted that the chairman write to Mr. J. H. Spring a declination of the offer."

Q. Do you recall that action being taken, Mr. Roberts?

A. Yes; I do.

Q. I call your attention, Mr. Roberts, to a meeting of the executive committee November 18, 1901, at which you appear to have been present, at page 114, and I will ask you to read into the record the entries therein appearing under the head of "Alabama Ore Properties" and "Iron Ores at Port Henry."

MR. DICKINSON: That is excepted to as irrelevant and incompetent and self-serving.

THE WITNESS: (Reading):

"Alabama Ore Property. This property is located near

Florence, Alabama, and was brought to the attention of the committee by a letter from Mr. William Edenborn to the president. The property is on the line of the Louisville & Nashville Railroad.

"Mr. Gayley stated that it would be a good property if we desired to enter into the foundry iron business. The president does not believe the Steel Corporation should take it. The chairman stated that he would prefer investing in properties adjacent to our own ore properties rather than to buy up these isolated pieces. Upon motion, duly seconded, it was voted that the proposition be declined. Mr. Edenborn did not vote."

Q. Do you recall that action being taken, Mr. Roberts?

A. I would not recall, without the note before me, that individual transaction.

Q. Is your recollection refreshed by looking at the entry, or do you not recall?

A. Only to the extent that it would be one of those propositions of which I spoke that we turned down. I do not recall it specifically.

Q. Read the other entry on that page.

A. (Reading):

"Iron ores at Port Henry——"

MR. DICKINSON: The same objection.

THE WITNESS: (Continuing reading):

"The president read a letter from Mr. James Gayley, first vice-president, embodying a report on ore lands of Messrs. Witherbee, Sherman & Company at Minesville, near Port Henry, New York. This report contains information about the quantity, quality and cost of mining the ore and the extent of the property owned by the interested parties. On motion duly seconded it was voted that the president decline the proposition."

By MR. SEVERANCE:

Q. Do you remember any action of that kind being taken relative to the acquisition of the Port Henry ores?

A. I do recall that, yes.

Q. Is the Witherbee & Sherman property at Port Henry a large or a small property?

A. Very large.

Q. Is it a newly discovered ore body, or has it been worked for a long time?

A. It is a very old mine. The deposit is of great magnitude. It is in successful operation and has been for many years in successful operation.

Q. You say it is still in operation?

A. It is still in operation.

Q. Are you advised as to whether any of the competitors of the Steel Corporation have, since 1908, acquired any interest in those properties?

A. Only by hearsay; but I think the Lackawanna have an interest in it. I would not be positive of that.

MR. DICKINSON: I object to his testimony on that, then.

MR. SEVERANCE: I do not mind. Mr. Gayley testified absolutely that they had, so it does not make any difference.

MR. DICKINSON: I do not care whether you mind or not. I put my objection down.

MR. SEVERANCE: Yes; certainly. I have no objection to your objection.

By MR. SEVERANCE:

Q. Here is one I passed over by accident: I call your attention to an entry in the minutes of the meeting of April 11, 1901, at page 13, under the head of "Cleveland-Cliffs proposition." I will ask you to read the entry therein appearing under that head.

MR. DICKINSON: Objected to as irrelevant, incompetent and self-serving.

MR. SEVERANCE: I call attention to the fact that quotations from the minutes of this meeting have been made by the Government in their exhibits.

MR. DICKINSON: That part we stand by.

MR. SEVERANCE: I am glad you are giving it a character.

MR. COLTON: It was put in as an admission.

By MR. SEVERANCE:

Q. Go ahead, Mr. Roberts.

A. (Reading):

"President Schwab submitted a letter from Mr. Gayley

concerning this proposition. Statements were made by the Chairman and by the President that the price named was beyond consideration. It was moved and approved that the President be requested to decline the proposition made by the Cleveland-Cliffs people."

Q. The Cleveland-Cliffs are still operating mines, are they not?

A. I so understand.

Q. A large company, is it not?

A. A large and important ore concern.

Q. I call your attention to the minutes of a meeting of April 23, 1901, page 30, under the head of "Alabama Steel & Wire Company option," and ask you to read that into the record.

MR. DICKINSON: The same objection.

THE WITNESS: (Reading): "This question was brought up again from a previous meeting. After some discussion on the lines of the prior meeting, it was voted that the president of this company decline the proposition at the price named."

By MR. SEVERANCE:

Q. You remember that property, offered by Mr. Gates?

A. I do.

MR. DICKINSON: That is also objected to because it refers to some minute on the same subject-matter.

MR. SEVERANCE: I will put it all in. I will go back and put all three of them in.

By MR. SEVERANCE:

Q. I call your attention to a meeting of April 11, 1901, page 13, an entry under the head of "Alabama Steel & Wire Company option," and will ask that that be read also in that connection.

A. (Reading): "Alabama Steel & Wire Company. Concerning a letter from J. W. Gates to the president of this company read in the committee, it was agreed that the president be instructed to advise Mr. Gates that we are not ready to consider the proposition and will not be ready for about two weeks. In the meantime, if Mr. Shuler would like to talk upon the subject, the president would be glad to see him."

Q. I call your attention to a meeting on April 22, 1901, page 27, and ask you to read that entry, under the heading of "Alabama Steel & Wire Company option."

MR. DICKINSON: The same objection.

THE WITNESS: (Reading): "The question of taking this property was discussed very freely. Mr. Edenborn was in favor of taking the property and closing up the plant. The chairman was impressed with the property if it could be bought cheap, because of its strategic position. He is opposed to it if the price is high, and would not favor its purchase under any consideration if it were intended to close up the plant. In this last proposition Mr. Converse agrees with the chairman. The president opposes its purchase on the question of policy, even though we could get it at a low price. It was finally recommended that the president be requested to decline the proposition."

MR. SEVERANCE: Those are all the entries on that subject.

By MR. SEVERANCE:

Q. I call you attention to a meeting of April 24, 1901, page 34 of the minutes, headed "Bridge Companies offered for sale." I will ask you to read that into the record.

MR. COLTON: The same objection.

THE WITNESS: (Reading): "Mr. Roberts asked the opinion of the committee as to the policy of the committee, whether or not they would entertain any proposition to purchase other bridge companies. He had then some propositions from small concerns, and it was the opinion of the committee that they had better be declined."

By MR. SEVERANCE:

Q. I call your attention to a meeting of June 25, 1901, page 80 of these minutes, and will ask you to read the entry on that page, under the heading "Youngstown Iron, Sheet & Tube Company of Ohio."

MR. DICKINSON: The same objection.

THE WITNESS: (Reading): "The president presented a letter from Mr. Henry M. Robinson, dated June 18, 1901, re-

ferring to a proposition to sell to this corporation the plant of the above named company, Youngstown Iron, Sheet & Tube Company. Upon motion it was voted that the president be instructed to decline the offer."

By MR. SEVERANCE:

Q. Is that concern still in existence?

A. It is; a very strong and active concern.

Q. It is one of the large competitors of the Steel Corporation, is it not?

MR. DICKINSON: I object to counsel testifying, and asking him if it is that way.

By MR. SEVERANCE:

Q. Is or is it not one of the large competitors of the Steel Corporation?

MR. DICKINSON: You can get the same answer by putting it that way.

MR. SEVERANCE: I want to make you happy, Judge.

MR. DICKINSON: You will get the same answer, but I do not like to appear to be asleep.

THE WITNESS: It is a strong and active concern, and a sharp competitor of some of the subsidiary companies of the United States Steel Corporation.

Q. I call your attention to an entry under date of September 25th, 1901, page 103, under the head of Columbus Iron & Steel Company, offering to sell their plant, and I ask you to read that minute into the record.

MR. COLTON: The same objection.

THE WITNESS: (Reading):

"The President read a letter from Vice-President Battell of the Columbus Iron & Steel Company, offering to sell their plant to us at double their cost, the cost was estimated at $420,000 and the purchase price would be about $800,000. On motion, duly seconded, it was voted that the President be requested to decline to entertain the proposition at the present time."

By MR. SEVERANCE:

Q. Do you recall that action being taken?

A. Not distinctly, without that record before me.

Q. You went off the executive committee early in 1902, Mr. Roberts?

A. About April, 1902.

Q. And did you resign at the same time you resigned from the directorate of the Corporation?

A. A short period before I ceased to be a director.

Q. Do you recall that while you were a member of the executive committee the Shelby Steel Tube Company was purchased, the Seamless Tube Company?

A. I do.

Q. Mr. Roberts, as a member of the executive committee did you have anything to do with that transaction?

A. I did.

Q. Why was the plant or the plants acquired by the Steel Corporation?

MR. DICKINSON: That is objected to as irrelevant and incompetent.

A. The National Tube Company had recently purchased the plants of the Standard Pipe Company to enable them to enter into the successful manufacture as they supposed of seamless steel tubes. It was reported to the executive committee that——

MR. DICKINSON: I object to any report.

THE WITNESS: That as a result of information obtained by the executive committee——

By MR. SEVERANCE:

Q. You mean, is that in lieu of your other statement, or is this a continuation?

A. I changed it, in view of Judge Dickinson's objection.

Q. All right, go ahead.

A. As a result of the information obtained the executive committee deemed it advisable to purchase the Shelby Tube Company in view of the patents which the Shelby Company owned, and which at that time there was existing litigation concerning as between the Standard Tube Company and certain individuals and the Shelby Tube Company, the defense of which litigation the National Tube Company had assumed

upon its purchase of the Standard. In connection with these patents which would be secured they would be enabled more successfully to prosecute the manufacture of seamless tubes than they were then in position to do. It came before us in this shape, and I voted on it entirely from the viewpoint of the control of the Shelby patents.

MR. DICKINSON: I object to his statement as to the viewpoint from which he voted on it as incompetent.

By MR. SEVERANCE:

Q. You said some litigation was pending between the Shelby and the Standard and certain individuals?

A. Yes.

Q. Who brought that suit?

A. Shelby. The defense was assumed by the National Tube Company.

Q. Is it or is it not a fact that seamless tubes are still being made by the National Tube Company under the patent so obtained from the Shelby Company, or have they been up to a recent date?

A. The machinery covered by the patents of the Shelby Tube Company has been in successful operation ever since and has displaced the machinery formerly used by the Standard. The Shelby Tube in the meantime has brought suit against outside parties and sustained the validity of those patents.

Q. That is the case against the Delaware Company?

A. Yes.

Q. Mr. Roberts, during the time that you have been connected with the Steel Corporation as a director, or as a member of the finance committee, or as a member of the executive committee, will you state whether in favoring the purchase or acquisition of any properties of any description at any time you have done so for the purpose of procuring a monopoly or eliminating competition or restraining trade?

MR. DICKINSON: That is objected to as irrelevant and incompetent and self-serving.

A. Never with any one of those views in mind, but strict-

ly from the standpoint of their necessity for the operations of the Steel Corporation as originally planned along the lines of conservation or efficiency in shop management.

Q. Mr. Roberts, I cannot seem to lay my hand on the minutes; do you recall that during the time you were a member of the executive committee the question of the construction of steel barges for use on the rivers came up?

A. I do.

Q. Who brought it up?

A. I did.

Q. Will you kindly state the action taken in regard to that?

MR. DICKINSON: That is excepted to as irrelevant and incompetent.

THE WITNESS: I suggested to the executive committee the advisability of entering into the manufacture of steel cars for railways, and also steel barges for use on the rivers around Pittsburgh. As a result of those suggestions the committee decided to engage in the building of steel barges, which has been done since that date by the American Bridge Company. This was an entirely new line of manufacture.

By MR. SEVERANCE:

Q. Has it been prosecuted to a very considerable extent or to a slight extent?

A. To a considerable extent at Ambridge, Pennsylvania.

Q. What plant is there at Ambridge?

A. The plant of the American Bridge Company.

Q. There is one entry that I overlooked here; in the minutes of the same meeting, November 18, 1901, from which the witness has read heretofore. I call attention to an entry on page 115, under the heading "Cornell Works, Cold Spring, New York." Will you read that entry?

A. (Reading): "Mr. Roberts stated that he had received a proposition concerning this plant and he would submit it to the committee in detail if it were of interest. On motion, duly seconded, it was voted that it could not be entertained at this time."

Q. Do you recall that action being taken?

A. I do.

MR. DICKINSON: The same objection.

By MR. SEVERANCE:

Q. Mr. Roberts, I call your attention to page 962, volume III, Government Exhibits, executive committee meeting December 3, 1901, where there is an entry under the head of "American Can Company," and I will ask you if you recall the action being taken that appears upon that minute.

A. I do.

Q. Please read it.

A. (Reading): "The president stated that he had invited Mr. W. T. Graham, president of the American Tin Plate Company, to state to the committee his views upon the matter of concession to the American Can Company already referred to in previous meetings of the committee. Mr. Graham stated that the American Can Company desired to place an order with the American Tin Plate Company for a definite amount of plates to be delivered in the first quarter of 1902, and that the American Can Company now asked some concession in the prevailing price on this order. After some discussion it was finally moved, seconded and voted that the president recommend that Mr. Graham make the price $3.75 per box on the proposition submitted. The president, Mr. Converse and Mr. Reid voted in the affirmative and the chairman and Mr. Roberts in the negative."

Q. It was carried then by one vote?

A. Carried.

Q. Now, what was the condition of the market at that time, if you recall, and what were the circumstances that occasioned the making of that price, if you know?

MR. COLTON: We object to that as calling for a conclusion.

THE WITNESS: The fact was, not a conclusion, that it was a sale for future delivery on a falling market. My judgment was that the market would not fall to the extent that was anticipated, and I voted no. As a matter of fact, the market did fall, and $3.75 per box represents about the selling price for the first quarter of 1902.

By MR. SEVERANCE:

Q. Do you remember now about how much the market de-

clined? It speaks of the prevailing price, which was December, 1901.

A. I think in the neighborhood of 25 cents a box.

Q. Mr. Roberts, since you have been a director of the Pennsylvania Railroad have you ever occupied any position in the committees of that road?

A. I have.

Q. What is it?

A. I have been a member of the road committee, and chairman and member of the supplies committee.

Q. As chairman of the supplies committee have you ever at any time taken any part in fixing the price of any commodities to be purchased from the United States Steel Corporation since you have been a director of that company?

A. I never have.

Q. Have you, either as director of the Steel Corporation or as a director of the Pennsylvania Railroad, during the time you have been a director of both corporations, taken any action or attempted in any way to influence the action of either company in connection with dealings they might have with each other?

A. I never have, and any such action is distinctly prohibited by the by-laws of both corporations.

MR. COLTON: I object to that on the ground that the by-laws are the best evidence.

THE WITNESS: (Continuing) Those of the Pennsylvania Railroad have provided for the duties of directors in this respect since 1847, and those of the Steel Corporation since the date of its incorporation.

Q. Have you at any time used your relation to the two companies to secure for either any advantage or concession from the other?

A. Never.

Q. Have you ever been asked to do so by any person?

A. Never.

Q. Have you ever acted or taken part in any discussion of rail, bridge or other steel prices in the Pennsylvania direc-

torate since you have been a member of the Steel Corporation directorate?

A. So far as they may relate to the Steel Corporation or to others?

Q. Anything they manufactured that would determine their prices?

A. I have never taken any action and in fact it is expressly forbidden that a director shall have a vote on any matter common to two companies of which he may be a common director. The minutes in all instances will show——

MR. COLTON: I object to his stating what the minutes will show, and what is prohibited, on the ground that the documents themselves are the best evidence.

By MR. SEVERANCE:

Q. Go ahead. What were you going to say?

A. That I am recorded if present as not voting.

Q. Have you ever taken any part or been present at any meeting of the directorate of the Steel Corporation at which sales to the Pennsylvania Railroad or the prices of the same were under discussion or voted upon?

A. I never have.

Q. I intend to confine my question to the time that you were a director of the Pennsylvania Railroad.

A. Common to both.

Q. Yes; you spoke of coming over once when you were on the Pennsylvania Board with the president of the Pennsylvania Railroad, to see Mr. Gary.

A. The term interlocking director is entirely a misleading one.

MR. COLTON: I object to that. There is no question.

By MR. SEVERANCE:

Q. You were about to make some explanation, Mr. Roberts. You may make it.

A. It is not a new feature of corporate life at all. There have always been directors common to more than one company, and the ethics of corporations as indeed the ethics of law provide for the conduct of directors who may be common to more than one company. It might be with equal propriety

applied to a lawyer who has more than one client, but the ethics of the law provide that in case of differences between two clients common to one lawyer that the lawyer takes no action in reference to either side. It is the same with corporations and their directors; in such cases they step to one side and do not participate.

MR. COLTON: I object to the answer as argumentative and speculative.

By MR. SEVERANCE:

Q. Do you know of any other gentlemen who have been directors of both the Steel Corporation and the Pennsylvania Railroad during your incumbency of these dual positions?

A. Mr. Henry C. Frick has been a director during the time I have been a director. Mr. Clement A. Griscom was also a director during his lifetime both of the Steel Corporation and the Pennsylvania Railroad.

Q. Upon the death of Mr. Griscom who was chosen to succeed him?

A. It was one of the vice-presidents. I cannot tell which one, of the Pennsylvania.

Q. It was not a director of the Steel Corporation?

A. No.

Q. At the present time, then the only directors common to the Pennsylvania Railroad and the Steel Corporation are Mr. Frick and yourself?

A. That is all. I would say that I was not a director of the Steel Corporation when I became director of the Pennsylvania Railroad.

Q. I understand that.

A. Nor was I a director of the Pennsylvania when I originally became a director of the Steel Corporation.

Q. It is only since 1909, I think you have already testified, that you have been a director of both?

A. Yes.

Q. During that time that you served on these respective boards with Mr. Griscom before his death or with Mr. Frick, did you ever know or hear of either of them acting or voting in any matter as between the two companies?

A. Never.

Q. Were you familiar generally with the character of the business done by the Carnegie Steel Company and the Illinois Steel Company respectively, immediately previous to the organization of the United States Steel Corporation?

A. I was.

Q. In general, if you know, about what was the character of the steel manufactured by the Illinois Steel Company as between open-hearth and Bessemer?

MR. COLTON: That is objected to on the ground that it is a matter of record, and that the record should be put in instead of the general statement of the witness.

By MR. SEVERANCE:

Q. You may answer.

A. About the year 1900 the Carnegie Steel Company had integrated largely along the lines——

Q. I do not know that you understood the question. I will ask that it be read.

(By request, the stenographer repeated the question, as follows:)

"Q. In general, if you know, about what was the character of the steel manufactured by the Illinois Steel Company as between open-hearth and Bessemer?"

THE WITNESS: That is what I am going to say.

By MR. SEVERANCE:

Q. You are going to answer that?

A. Yes.

Q. Very good.

A. The Carnegie Steel Company had integrated largely along the lines of basic open-hearth steel, whereas the Illinois Steel Company was principally a manufacturer of Bessemer steel. As of that year the output of the Illinois Steel Company in basic open-hearth steel was about 80,000 tons, whereas the output of the Carnegie Steel Company was 1,250,000 tons.

Q. For what purposes, if any, is open-hearth steel used for which Bessemer is not used, or was not at that time?

MR. COLTON: You are asking as of that time?

MR. SEVERANCE: That is what I said.

MR. COLTON: You made it alternate.

MR. SEVERANCE: I meant as of that time.

THE WITNESS: Bessemer Steel can be substituted by open-hearth steel.

By MR. SEVERANCE:

Q. Did you say by or for?

THE WITNESS: By open-hearth steel. Open-hearth steel cannot be substituted by Bessemer steel. In other words, you can supply any or all specifications with open-hearth steel, but you can supply specifications only to a very limited extent with Bessemer steel. For instance, all structural material is specified to be open-hearth steel; therefore, beyond their 80,000 tons of output the Illinois Steel Company was unable to compete with this basic open-hearth steel output of the Carnegie Steel Company. The open-hearth output of the Illinois Steel Company was used practically entirely in sheared plates, whereas the output of the Carnegie Company went into very varied lines of product, many of which the Illinois Steel Company did not make at all. For instance, universal mill plates, structural shapes of all kinds, spring steel, and so forth. The competition existing at that time between these concerns was confined to their Bessemer output, which largely or almost exclusively went into steel rails and some billets, for purposes such as wire, sheets, and so forth.

Q. Where did the Carnegie Company sell the bulk of its billets?

A. In the Pittsburgh district.

Q. Where did the Illinois Steel Company sell the bulk of its billets, so far as it had any to sell?

A. The Chicago district.

Q. Did either the Carnegie or the Illinois consume any of their own billets?

A. Oh, yes.

Q. The larger or smaller part?

A. All sizes, depending upon the quality of the finished material.

Q. Larger or smaller percentage, I meant.

A. The larger percentage. As I stated this morning, the sale of billets has always been more or less the sale of surplus product. Whenever steel manufacturing concerns had sufficient orders for finished material to consume the output of their steel-making furnaces or converters they advanced it to the most finished form that it was possible for them to put it in, as it was to their advantage to do so from a money standpoint. At other times, when their demand was not sufficient for finished material, they disposed of their steel in its semi-finished form.

Q. Where did the Carnegie Steel Company sell the bulk of its rails?

A. South, southeast, east, and in the territory adjacent to Pittsburgh.

Q. Where did the Illinois Steel Company sell its rails?

A. The middle west, south and northwest, and in proportion as they supplied the wants of their adjacent territory, they naturally came into competition with each other in their surplus product of their rails which they could not market in their territory which naturally belonged to them.

Q. Was that a large or small percentage of their total output of rails?

A. A comparatively small percentage.

(Whereupon an adjournment was taken until to-morrow, Thursday, June 5, 1913, at 10:30 o'clock a. m.)

SEVENTIETH DAY.

EMPIRE BUILDING,
71 BROADWAY, NEW YORK CITY,

JUNE 5, 1913.

Before SPECIAL EXAMINER JOHN ARTHUR BROWN.

Present on behalf of the United States, MR. DICKINSON and MR. COLTON.

Present on behalf of the defendants, MR. SEVERANCE, MR. BOLLING and MR. REED.

PERCIVAL ROBERTS, JR.,

the witness under examination at the taking of adjournment, resumed the stand for further

DIRECT EXAMINATION (Continued),

By MR. SEVERANCE:

Q. You testified yesterday, when being interrogated relative to the production of the Carnegie and the Illinois Steel Companies in 1900, that the output of the Illinois Steel in basic open-hearth steel was about 80,000 tons, whereas the output of the Carnegie Steel was 1,250,000 tons. Do you desire to correct that statement in any particular?

A. Yes; I had in mind the output of sheared steel plates.

Q. At which place?

A. At the Illinois Steel Company. Their tonnage of open-hearth steel ingots in 1900 was about 190,000 tons instead of 80,000 tons, making the excess of the Carnegie Steel something over a million tons.

Q. You were not a member of the board of directors of the United States Steel Corporation at the time the so-called Hill lease was negotiated, were you?

A. I was not.

Q. Were you a member at the time the same was surrendered?

A. I was a member of the finance committee at that time, and also a director.

Q. Will you state the reasons which actuated the Steel Corporation in surrendering the Hill lease?

MR. DICKINSON: That is objected to as irrelevant and incompetent and self-serving.

THE WITNESS: The controlling reasons were two, one was commercial, that the ore had not developed entirely of the quality that had been expected; the other was the criticism of the Government as to the amount of the Steel Corporation's ore holdings. The majority of the committee for those two reasons deemed it wise to exercise their option which they had in the lease for cancellation in 1915. I personally did not coincide with those views entirely, as, notwithstanding the criticism of the Government I believed that our ore reserves were none too large for the satisfactory operation of our plants. I, however, deferred to the opinions of the majority and voted in favor of cancelling the lease.

Q. Mr. Roberts, from your knowledge of the Steel Corporation and its competitors, what do you say as to the power of the Corporation, either at this time or at the time this suit was brought, in October, 1911, to crush and drive out of business business competitors.

A. It is a physical impossibility for it to do so, even if it had that desire. The nature of the steel business is such that should a trade war be inaugurated at this time or any time in the recent past, destruction would occur to either party, both would be practically crippled, the larger concern suffering just in the same proportion as the smaller concern, relatively suffering to the same extent, due to its larger production and greater losses which it would sustain in the reduction of its prices to an unremunerative point. It is an absolute impossibility to successfully destroy its well-equipped rivals.

Q. Has the Steel Corporation to your knowledge ever attempted to crush a competitor, either a large or small competitor, or attempted to secure customers of other concerns by secret discounts or other unfair means, or attempted to secure the business in particular localities by unfair means?

MR. DICKINSON: That is objected to because it does not show what means are indicated; it is just an opinion of the witness which is called for, which involves a judgment on facts undisclosed.

Q. You may answer.

A. It never has in any manner, shape or form. It has at all times sought a natural and healthy competition.

Q. Has the Steel Corporation to your knowledge at any time sought to drive any competitor out of business by making low prices in one locality as compared with the ordinary current prices over the country?

A. It never has. Basing prices for all materials have been Pittsburgh plus freight to destination. There may be at this time, at the immediate present, some prices based on Chicago plus freight, but it has been the universal practice in the steel trade, not only with the United States Steel Corporation but with others, to use Pittsburgh as the base point for all quotations.

Q. Did that practice of using Pittsburgh as a basing point originate before or after the organization of the United States Steel Corporation?

A. Many years before.

Q. What has been the policy of the Corporation to its consumers as to stability, impartiality and reasonableness of prices?

A. It has at all times sought to maintain reasonable prices and to reach directly the consumer without the assistance of the middleman or broker. Prior to the formation of the Steel Corporation the steel trade was largely in the hands of brokers who took the specification of the consumer and handled the same on a commission basis. One of the earliest plans of the Corporation was to eliminate this percentage basis and seek the consumer directly by the establishment of warehouses and carrying stocks, all in accordance with this idea of a large department store which I referred to yesterday. For instance, a consumer having a varied specification in the old days would have to deal with a number of different concerns making certain specialties. With the formation of the

Steel Corporation and their diversified lines of products he was enabled to obtain quotations from one party on the entire bill. The Steel Corporation has sought as far as possible to maintain prices within reasonable limits without the wide fluctuations which formerly took place and which neither the consumer sought and in many cases was forced upon the producer by concerns who were at times in such stress as to be forced to dispose of their products much below the prevailing market prices to enable them to obtain necessary funds to meet their requirements. As a matter of fact, as a result of these violent depressions from one cause or another the pendulum of price swung to the other extreme, and those who weathered the storm of depression necessarily to recoup raised their prices just in proportion as they had been too low before, to too high a point afterwards; the consumer suffered in this and they have since the inauguration of a more stable market been enabled to conduct their business with less money invested in stocks and material, feeling more assured of a stable market than they had been in the past. Another benefit to the consumer——

MR. DICKINSON: May I hear the question read?

(The stenographer repeated the question as follows:)

"Q. What has been the policy of the Corporation to its consumers as to stability, impartiality and reasonableness of prices?"

MR. DICKINSON: All of the foregoing answer that is not responsive to the question is objected to on the ground as filling the record with unnecessary and immaterial matter not called for by the question.

MR. SEVERANCE: I will state that I know of nothing in the answer that is not directly responsive.

MR. DICKINSON: I differ with you about that, so I put my exception in.

MR. SEVERANCE: I will accept it as responsive to my question.

MR. DICKINSON: The point I am making is, I object to the filling of the record with things that are not called out by counsel's questions. It is making the record unnecessarily long

and unnecessarily consuming the time of counsel on both sides, and I object.

MR. SEVERANCE: I am very sorry to consume your time, but I am convinced of the fact that the answer is directly responsive and material.

By MR. SEVERANCE:

Q. Proceed with the answer, Mr. Roberts.

A. Another benefit to the consumer has been in enabling the consumer to procure a uniform quality of material which has been brought about by the operations of the United States Steel Corporation, in the manner I described yesterday, by consultation with experts and their ability to adapt and use new processes and improvements which from time to time are made.

MR. DICKINSON: I object to the witness repeating what he said yesterday.

Q. What has been the policy of the Steel Corporation as to exacting premiums for prompt delivery in boom times or otherwise?

MR. DICKINSON: I except to that as incompetent and irrelevant.

By MR. SEVERANCE:

Q. You may answer.

A. It has never been its policy, nor do I think it has been generally the policy in the trade; I mean with the larger concerns of the trade. There have been some smaller concerns which run to a greater or less extent, depending on the conditions of the market, and in good times they operate with very little tonnage on their books and take advantage of such cases. I do not think, however, that the larger concerns, any of them, follow that practice.

Q. What has been the effect of the Corporation upon the quality of the steel product put out by its subsidiaries?

MR. DICKINSON: That is objected to as irrelevant.

A. My answer to that would be the same as to your previous question. It has undoubtedly tended to improve quality.

It takes advantage promptly of all improvements and developments in processes of manufacture in articles which it produces.

By MR. SEVERANCE:

Q. What advantage, if any, is there in the common ownership of plants scattered in different parts of the country?

A. Conservation, largely, economy in transportation and proximity to the point of consumption.

Q. Is there any advantage to the consumer in having points of production near to the points of consumption?

A. Yes; prompt delivery, close contact with the source of supplies.

Q. What do you say, as a result of such study as you have made of the prices of steel products since the formation of the United States Steel Corporation as to whether they have advanced or decreased?

MR. DICKINSON: That is objected to because it is not shown what study he has made, and his opinion is based upon a hypothesis as to facts which have not been shown.

By MR. SEVERANCE:

Q. You may answer.

A. The tendency has been downward; not a regular and constant downward movement; there have been temporary fluctuations controlled by the law of supply and demand, but the entire cycle since 1900 to the present day has been a downward movement with an increase in wages during the same period.

Q. Take the case of your old plant, of which you were formerly the president, the Pencoyd plant. How do the prices of plates, girders and material compare with what they were in 1900 at that plant?

MR. DICKINSON: At what time do you mean now, and what time in 1900?

MR. SEVERANCE: I will say to compare 1900 with October, 1911, or the year 1911 and the present year.

MR. DICKINSON: And then do you mean the whole of 1900? Do you mean a corresponding period, October, 1900, with October, 1911?

MR. SEVERANCE: I do not fix any particular time in the year, but I am only asking in a general way.

MR. DICKINSON: I know, but I will ask him in particular, and I would like to fix the time as to which you are getting comparisons.

MR. SEVERANCE: I will say the year 1900 and the year 1911. About what percentage of increase or decrease was there between those periods?

MR. DICKINSON: On what, now?

MR. SEVERANCE: Between 1900 and 1911.

MR. DICKINSON: On what articles?

MR. SEVERANCE: On plate girders and similar material, at Pencoyd.

MR. DICKINSON: Now you are only asking as to Pencoyd?

MR. SEVERANCE: Yes, that is all; I am asking about his old plant.

THE WITNESS: Wages——

By MR. SEVERANCE:

Q. I have not asked about wages. I asked about the price of plate.

A. Prices of plate girders?

Q. Yes.

A. The prices of plate girders in 1911 were about thirty per cent. below what they were in 1900.

Q. How were wages at Pencoyd in 1911 as compared with what they were in 1900?

A. About thirty-five per cent. higher.

MR. SEVERANCE: I want to ask a few questions relative to some testimony given by a witness for the Government, Mr. Francis Walker. Certain tables were introduced in connection with his testimony, and I will show the witness those documents, diagrams and tables.

Mr. Colton, you may turn to pages 1623 and 1653 of the exhibits, Volume V. Part I. Page 1623 is a table of prices of steel beams, and 1653 is a diagram upon which he traces the movement of the prices of steel beams and other commodities, to wit, black sheets, tank plates and steel bars.

MR. COLTON: The prices being at Pittsburgh, base prices?

MR. SEVERANCE: That is right.

By MR. SEVERANCE:

Q. You will notice that on that exhibit, page 1653, Walker Exhibit 246, there appear lines showing the movement, as Mr. Walker thinks it was, of black sheets, tank plates, steel bars and beams. From your knowledge of the business, would you say that those items are comparable items of production from the comparative movement of which any deduction can be drawn as to whether the prices of one or the other are controlled by artificial means?

MR. DICKINSON: I object to the question as vague, indefinite, and calling for a conclusion and not facts.

MR. SEVERANCE: Your witness Mr. Walker, who never was in a steel mill in his life, testified on that subject.

MR. COLTON: You do not mean that.

MR. SEVERANCE: Yes, I do. Go on and answer the question, Mr. Roberts.

MR. DICKINSON: I object to counsel stating what Mr. Walker testified, in examining his witness. I do not remember of his reading anything that Mr. Walker said.

MR. SEVERANCE: I am going to read something pretty soon.

MR. DICKINSON: I do not think that is proper on the examination of the witness, but I am perfectly willing for him to do that.

MR. SEVERANCE: I will do it pretty soon. Just answer the question.

THE WITNESS: Are you ready for me to go ahead?

MR. SEVERANCE: They are just discussing to see if there are any more objections.

MR. DICKINSON: We are doing that very thing. There is further objection made on the ground that counsel states that this table shows what Mr. Walker thinks, whereas the testimony shows that it is based upon prices taken from trade papers.

MR. SEVERANCE: And he said where there was more than one price he picked the one he thought was better, so that my statement is quite correct. You may answer the question.

That is what he said. Answer the question if you understand it; if not, it will be read to you.

MR. DICKINSON: One moment; I object to counsel stating and summarizing what Mr. Walker said, as in our judgment that is not a correct statement, and I think it is improper for him to be informing the witness that way when he is under examination.

MR. SEVERANCE: I am merely doing that because counsel made a statement as to what Mr. Walker had said in his statement.

MR. COLTON: No, I did not; you made the statement.

MR. SEVERANCE: I did not.

MR COLTON: The record will show.

MR. SEVERANCE: Proceed; we will not have any trouble. Just keep quiet and we will get along all right.

THE WITNESS: Exhibit 246 of Volume V, Part 1 of Government Exhibits, displays graphically four tables of prices, Nos. 8, 9, 10 and 11, covered by pages 1623, 1624, 1625 and 1626 of the same volume. Those four tables purport to be the weekly quotations of the Iron Age.

MR. DICKINSON: Excuse me; will you read the question to the witness?

MR. SEVERANCE: I do not think that is quite proper, Judge Dickinson, for you to continually interrupt in this way when he is answering the question, and ask to have it read. If the witness does not understand the question he can easily ask to have it read.

MR. DICKINSON: If his answer is not responsive to the question we have a right to have the question put again.

MR. SEVERANCE: You cannot tell whether the answer is responsive or not; he is beginning his answer, and he has a right to go on and make it.

MR. DICKINSON: I would like to have it read for my own information. Counsel cannot object to that.

MR. SEVERANCE: Judge Dickinson having made objection to it, not knowing what it is, it may be read.

(Here the stenographer repeated the pending question, as follows:)

"Q. You will notice that on that exhibit, page 1653, Walker

Exhibit 246, there appear lines showing the movement, as Mr. Walker thinks it was, of black sheet, tank plates, steel bars and beams. From your knowledge of the business would you say that those items are comparable items of production from the comparative movement of which any deduction can be drawn as to whether the prices of one or the other are controlled by artificial means?"

MR. DICKINSON: I object to what the witness has said as filling the record with matter which is not responsive to the question addressed to him by counsel.

MR. SEVERANCE: I think it is responsive.

THE WITNESS: To the question I answer no, for the following reasons:

MR. DICKINSON: If counsel assumes the responsibility, that is another matter.

MR. SEVERANCE: I will take it.

MR. DICKINSON: Of course we do not waive the objection.

MR. SEVERANCE: I do not mind that. Go ahead, Mr. Roberts.

THE WITNESS: To the question I answer no.

Q. Will you give your reasons for that answer?

A. My reasons are as follows: Each of the lines in question, for each of the products whose quotations are given in tables 8, 9, 10 and 11, of which the table on page 1653 is simply a pictorial reproduction of the facts contained in those four tables, are in no wise comparable. The products are totally different, have a different market, and bear no relation whatever one to the other. The four lines in question are put on this table as a matter of convenience.

MR. DICKINSON: We object to that statement, witness not showing sufficient knowledge to make such a statement.

MR. SEVERANCE: What is that?

MR. DICKINSON: We object to that statement, the witness not showing sufficient knowledge to justify a statement of that character.

THE WITNESS: They give no additional information by being placed upon this one table than they would if placed upon four different ones.

MR. SEVERANCE: Judge Dickinson suggested he would have

no objection to my reading the testimony of Mr. Walker. Therefore I will read his testimony.

MR. DICKINSON: No; I said I thought it was improper, and I say now I think it is improper examination, but if you are going to state what Mr. Walker said, if you are going to pursue that method, I thought you ought to read it, is what I said; but of course I will object to it.

MR. SEVERANCE: Oh, you are going to object?

MR. DICKINSON: Certainly.

By MR. SEVERANCE:

Q. I will call your attention to the testimony given by Mr. Walker on this subject, so you will understand clearly what I am interrogating you about.

MR. SEVERANCE: Look at page 2633, Judge.

MR. DICKINSON: Objected to as improper examination.

MR. SEVERANCE: Mr. Walker, the witness on the part of the Government, who testified with reference to these tables, being under examination by Judge Dickinson, the following appeared:

MR. DICKINSON: Where are you reading from now?

MR. SEVERANCE: Page 2633.

By MR. SEVERANCE:

Q. (Reading):

"Q. Please refer to Diagram No. 4, Government Exhibit No. 246, and explain the curve for beams, and what it indicates as to fluctuation of prices and artificial conditions."

Objection being made, Mr. Dickinson said:

"Strike out 'artificial conditions,' then and substitute 'as to competitive conditions.'

"A. Taking first the prices before the organization of the Steel Corporation, for the period indicated on the diagram, we find that the price of beams runs frequently for a number of months at a time without any fluctuation in price, while other products which were subject to competitive conditions fluctuated almost constantly from month to month.

"Q. From your knowledge derived as an economist, and by a study of prices, and your knowledge of iron ore, state

whether or not, when there are free competitive conditions the market is characterized by fluctuations and changes in prices from time to time.

"A. Where the market conditions are really competitive, the prices of iron and steel products, of the kinds here under consideration, naturally tend to fluctuate from month to month and from time to time, and do not tend to run at uniform prices for a long period of months together.

"Q. Where you have over a period of months continuously a constant price, what does that indicate to your judgment as an economist as to artificial control of prices?

"A. For iron and steel products here under consideration, that indicates quite positively that such prices are controlled by artificial conditions, and not by competitive conditions.

"Q. Now, proceed, if you had not finished with your answer in regard to diagram No. 4, in regard to beams.

"A. Taking certain illustrations of the price movement of beams for the period 1895 to 1900, we find, for example, that from June, 1896, to April, 1897, with a very brief exception at the end of 1896, the prices were maintained at about $1.55 per hundredweight.

"During these same months the price of tank plates, which in its commercial relations and also in relation to the conditions of production, cost, and so forth, is a nearly related product—the price of tank plates, which fluctuated from month to month during this period, fell rapidly from about $1.28 per hundredweight to about $1.08 per hundredweight. The margin between the two thus rapidly increased, the one, the commodity whose prices were controlled by competitive conditions, declining, while the commodity whose prices were controlled by artificial conditions remaining at a nearly constant level, and at a relatively much higher price than it would have been compared with plates if both of them had been controlled by competitive conditions."

Now, having your attention called to the tables and the deductions so drawn by Mr. Walker, I will ask you whether or not plates are a very similar product, so far as price goes, and where the two products, namely beams and plates, are

sold under competitive conditions the price level is generally about the same. What is the fact as to that from your knowledge of the business?

MR. DICKINSON: Objected to on the ground that it is not shown that the witness through that period had anything to do with the manufacture of plates or the sale of plates, and that he has not shown any knowledge in regard to pools or the operation and effects of pools.

THE WITNESS: Plates and beams are entirely dissimilar products, used for entirely dissimilar purposes, are not governed by the same costs of production and are largely not made by the same manufacturers or produced by similar machinery.

By MR. SEVERANCE:

Q. Was that the case previous to 1900?

A. It was, and since 1900. Following the lines indicated on the diagram in question, Exhibit No. 246, the statements which you read from Mr. Walker's testimony are not shown to be accurate, if you follow the lines for beams and plates on this diagram. In a number of cases, for instance, in 1895, the price of plates was rising rapidly and reached about 1.85 cents per pound in the month of September, while the price of beams remained stationary during this period at a price of 1.6 cents per pound. Again in the year 1899 the price of plates in the month of September reached 2.85 cents per pound, while the price of beams remained stationary at 2.25 cents per pound. Nowhere on the diagram in question between the years 1895 and 1911, does any similarity between these two price lines which would indicate any exact relations appear, whether during times of the operation of pools or otherwise.

Q. Mr. Roberts, does or does not the fact that the quoted price in the trade papers of a steel commodity such as beams continue at a level for a period of months indicate anything as to whether or not the price of the same is controlled or artificial?

MR. DICKINSON: That is objected to on the ground that it has not been shown that his business and experience qualifies

him to speak, nor has it been shown that he was in any pool except the beam pool, or that he has knowledge of the existence or effect or operation of other pools, or the periods during which they operated.

MR. SEVERANCE: How many pools was Mr. Walker ever in?

MR. COLTON: He studied pools.

By MR. SEVERANCE:

Q. Go on and answer the question.

A. The market prices as obtained from trade publications are theoretical, and do not represent in detail actual selling prices. They, as is the case with other daily news, are the result of information gleaned on the street and otherwise, and represent the best judgment and opinion of those who collect it, and express their own individual views at times, and sometimes based on some one transaction or more transactions from week to week. In considering these market prices it is necessary to consider the nature of the product sold, the variety of the product, the frequency of the sales, whether large or small, numerous or few; and therefore you can not compare the market prices of one line of products and their extension at uniform prices over a period of time with those of dissimilar products. For instance, bars are of a multitude of different sizes and weights, varying possibly from a ton to a few pounds per bar. The number of the sales is very great, in very varying quantities. A man seeking information for a market report would daily obtain a great number of such quotations, and it would tend to produce in his reports a more fluctuating tendency over a period of time in giving the market prices than in the case of the sale, for instance, of beams where the manufacturers were few in number. For instance, as of about the year 1900 over seventy-five per cent. of the structural material in the United States was produced by three concerns. The nature of the sales of this material was such that there was not nearly the frequency that there was in the case of bars. In making the market price, some one individual building in a certain city, or an individual bridge at a certain destination would establish what would be known as a market price extending over a considerable

period of time until, possibly, another structure of the same kind might be reported at different figures.

MR. DICKINSON: Will you let me interrupt you for just a moment, Mr. Roberts?

THE WITNESS: Certainly.

MR. SEVERANCE: I would prefer that you should not interrupt all the time, Judge.

MR. DICKINSON: I asked permission to do it, and I have a good reason for doing it. If you insist I shall not; that is another matter. I just want to get the question in my mind.

MR. SEVERANCE: Why not write down the questions?

MR. DICKINSON: I can remember some of them, but this one is interminably long.

MR. SEVERANCE: Just read the question.

(The stenographer repeated the pending question.)

MR. SEVERANCE: Now, will you read Mr. Roberts' answer to him, so that he will know where he had arrived at the time he was interrupted?

(The stenographer repeated the answer given by the witness.)

By MR. SEVERANCE:

Q. Have you something further to add, Mr. Roberts? You were proceeding with your answer at the time you were interrupted.

A. Giving a concrete example of an instance of which I have personal knowledge: In the year 1896, in November, the market price for beams, as represented on the table No. 8 is 1.53 cents per pound, Pittsburgh; Pittsburgh is the basing price. That means 1.53 plus a fraction of a cent for New York delivery. As of November 5 of that year, I think, which was the day after Mr. McKinley's election to the Presidency, I made a price for beams delivered in New York for the Sherry building of one cent a pound.

MR. DICKINSON: That is objected to as giving a single instance, when his opinion is called for upon general conditions.

THE WITNESS: I have not finished yet.

MR. SEVERANCE: I would suggest that you wait until he finishes his answer and then make the objection.

MR. DICKINSON: I have a right to object now.

MR. SEVERANCE: I do not think you have, and I want to enter upon the record an objection to the evident intent of counsel to throw the witness off the track, in giving an answer, by these constant interruptions.

MR. DICKINSON: I disclaim any such intent; I have shown no such disposition and have no such disposition, but I do claim the right, when the witness is asked a question on a general proposition and gives a particular instance, to object to that at the time, and I do not feel that I am bound to sit here and let him go on and wander away from the question without objection. That is for the Court to determine, and not for opposite counsel. We will submit the matter to the Court.

MR. SEVERANCE: I wish to state that the witness's answer is directly responsive, and is accepted as such. Proceed, Mr. Roberts.

MR. DICKINSON: I have not seen one yet that has not been accepted as such.

MR. SEVERANCE: You may proceed, Mr. Roberts. Never mind how cross the Judge is. Go on.

THE WITNESS: (Continuing) The price of one cent a pound was met by other manufacturers, and was the price of beams for some months afterwards, although it was not reflected in the market reports of the Iron Age until July of the following year, 1897.

Again, I want to call attention to the fact that a straight line on the diagram indicates nothing in regard to a controlled market, for the reason that the beam pool was established January 1, 1897, and operated from that period, during which time there was a controlled but fluctuating market.

By MR. SEVERANCE:

Q. During the operation of a pool such as the beam pool, how is it that prices fluctuate?

A. They fluctuate in accordance with supply and demand, always within reasonable limits, and that was the controlling factor of the beam pool, of which I can speak personally. Its object and purpose were to keep prices within reasonable

limits and to prevent destructive competition. That was its purpose and its object.

Q. Were those prices maintained at a uniform figure for long periods of time, or did they fluctuate during the existence of the pool?

A. They fluctuated during the existence of the pool as shown on these charts. The matter of control in no sense of the word means uniformity.

Q. That is what I wanted to get at.

A. But it was a control within reasonable limits, as distinguished from destructive limits.

Q. Was there anything to hinder the members of the pool changing the prices from month to month?

A. There was not, and it was frequently the custom to do so, nor was it in the structural pool impossible to vary prices as between each manufacturer. The controlling factor in that pool was the percentages of output, or the percentages of orders, percentages of the business of the country allotted to each member. Within that allotment he was expected to retain all his profits. In what he manufactured beyond that allotment he shared his profit with others, but there was nothing to prevent each individual member of that agreement to sell below the market price if he saw fit, his own individual product.

Q. Is there anything in the fact that the market price continues on a level; that is, with no apparent change; (by "market price" I mean the price quoted in the trade journals for the period of a year or several months), indicating that that uniform level is produced by an association or pool or some other artificial arrangement?

A. None whatever. It may be the absence of any important or distinguishing contract which would suggest a change in market values. For instance, a large building like the Woolworth building might establish a market price which would stand as the market price for some months, until another large building might be taken at a different figure. It does not indicate anything excepting that the reporter gathering the news has not found anything to make him

change his views as to what the market price should be. It may be the absence of business.

Q. Is it or is it not a fact that during the period of the beam pool, when you were connected with it, prices were maintained at a level by the members of the pool?

A. No, prices varied as between the various manufacturers; not to a great extent, but there were variations, individual variations during that time. The fixed and controlling factor, as I said, was the allotment of percentages of output.

Q. Mr. Roberts, Mr. Walker testified that he made up these various documents covering the period from 1895 to 1910, instead of from the ten year period, before the organization of the Corporation, and at page 2613 of the record gave the following reason, speaking of 1895:

"I decided that the year 1895 was a fair point to begin in order to compare, for example, the movement of prices for a period of years during the organization of the Steel Corporation with a period of years before its organization. I decided on that particular year for the beginning of the tables for several reasons. In the first place, there had been during the 90's, the last decade of the last century, a very marked technical development which had greatly reduced the cost of manufacture. This marked technical development made itself particularly felt in the latter part of that decade, and only to a comparatively slight extent in the earlier part of that decade. Of course it is evident, and it is a fact, that with such a development costs tended to be lower, and prices under normal conditions of business would tend likewise to be lower. I considered that 1895 was a fair point on that ground."

What marked technical development was there tending to a greatly reduced cost of manufacture during the last half of the decade ending in 1900?

A. In that ten year period there was no technical development whatever other than improvements in details, refinements in processes, and a growing demand which at times towards the end of the period exceeded the supply. It was a period in which during the early part of the decade due to the improvements which I have spoken of yesterday as

having taken place in 1890, the output of the country was very materially increased and exceeded the demand. The reverse occurred at or about the termination of that ten year period; as of about the year 1895, from which Mr. Walker dates his diagram the only change which occurred was the introduction of the Mesabi ore, which at that period could be used to only a very limited extent in a blast furnace, and which until about 1900 could not be considered in anything like the same light as since that date. The first four or five years of its introduction it was used, as I say, to a very limited extent, was sold at a comparatively low figure, and just in proportion as blast furnace experts realized how to use it the price gradually increased until it stood at what it does today, but during that five years it was going through an experimental period and there were no marked developments as I have said whatever in the ten year period from 1890 to 1900. There were prior to that.

Q. Mr. Roberts, was there any more marked technical development during the years from 1895 to 1900 than during the years from 1890 to 1895?

A. There were not.

Q. You testified yesterday to certain things when you said —I think your expression was "revolution," or something to that effect, in the steel business, when you mentioned the Jones mixer and electrical appliances, and so forth. Were those before or after the year 1890?

A. All prior to the year 1890.

Q. What other things have since come in that you would regard or could be properly called a marked technical development. I am bringing it clear down to the present time?

A. The introduction of the electrical furnace for the manufacture of steel, which is still in its infancy, and from which there has practically as yet been no output except for experimental purposes. That is the only one of importance since the introduction of electrically driven machinery.

Q. When was that developed, so far as it has been developed, during that period?

A. Prior to 1890.

Q. No, I mean the electrical.

A. The electrical steel?

Q. Yes.

A. It has been a gradual development extending probably for the last seven or eight years.

Q. Mr. Roberts, does or does not Bessemer pig iron enter into the manufacture of open hearth steel?

A. It can, but it does not.

Q. As a practical matter it does not?

A. No, it does not.

Q. What do you say as to whether the six years beginning with 1895 were years of great prosperity in the iron and steel industry, 1895 to 1900, inclusive?

A. The earlier years of that period showed an increasing consumption in the country, but the increase in production had outstripped it and prices in consequence were very low. In 1897 and 1898 there was a period of destructive competition, but towards the close of the period consumption had overtaken production and good prices prevailed. Very low prices, probably the lowest which we had ever had up to that time, occurred during the first part of that period.

Q. How were prices in 1897 and 1898 as compared with any other years in the history of the industry, so far as you know it?

A. In certain lines such as rails they were lower than they had ever been before, and much below the cost of manufacture.

Q. How were they in other lines beside rails?

A. In 1896 and 1897 the price of beams was below cost and lower than ever before in their history.

Q. I read you a statement made by Mr. Walker at page 2616:

"The years 1897 and 1898 were very good years in the iron and steel business, from the point of view of output. The production was larger in those two years than in any previous years in respect to iron and steel. The prices, it is true, were low. These low prices resulted, however, from the technical improvements which occurred during this time, which I have already referred to, and to the lower cost ores which were then available in a large degree."

What in your opinion was the occasion of the low prices at that time?

MR. DICKINSON: Objected to because it is not shown that the witness at that time had had experience in the production or sale of the variety of articles with respect to which his opinion is called for so as to qualify him to give an opinion.

THE WITNESS: I was in 1897 and 1898 a seller of beams and structural material, and during those years they reached a point below the cost of manufacture, and lower than they had ever before or since been sold at.

By MR. SEVERANCE:

Q. What was the cause?

A. It was largely one of destructive competition, brought about by the attempt of the Carnegie Steel Company to run their plant full at a time when the consumption did not amount to the production of the country.

Q. Did these low prices result from any technical improvements occurring at that time?

A. They did not, and they were below cost.

Q. What was the general condition of business in all lines in 1899 and 1900?

A. Active, and at good prices.

Q. Was that local to the United States, or was it world-wide?

A. It was world-wide. It was after the conclusion of the Spanish war, and everything in all lines of trade was active during those years, and the demand exceeded the supply.

Q. What effect did that have upon iron and steel prices?

A. They increased.

Q. Are steel rails and billets sold in the market comparable items from which any deduction can be drawn as to whether the market price of one or the other is controlled?

A. They have no relations whatever. They are neither of the same chemical composition nor are they sold for the same purpose. The market for billets might be in a very depressed condition and the market for rails might be very active, and *vice versa*. They are not used by the same consumers.

Q. Mr. Roberts, to your knowledge, obtained during your connection with the United States Steel Corporation, will you state whether or not it has in any respect restrained trade or has it extended trade?

MR. DICKINSON: Objected to as incompetent and irrelevant, too broad and comprehensive, not asking for facts, but only for a conclusion.

By MR. SEVERANCE:

Q. You may answer.

A. It has been the means, the very great means of extending trade, not only domestic, but foreign; the latter in a way which could not be done by any other organization now in existence in this country. This foreign trade is only possible by reason of this organization and the diversified products which it handles. So far as domestic trade is concerned, the reasonableness of prices, the reasonable limits within which prices have been held has increased consumption as against a very widely fluctuating market that existed previous to its organization.

Q. Will you state, Mr. Roberts, whether or not it has been the policy of the Steel Corporation to restrain trade or to extend trade?

MR. DICKINSON: That is objected to as irrelevant and self-serving.

THE WITNESS: It has been its endeavor at all times to extend trade.

MR. SEVERANCE: You may examine, Judge.

CROSS-EXAMINATION

By MR. DICKINSON:

Q. Mr. Roberts, what papers did you have in mind when you spoke of trade papers, and the quotation of prices in your recent testimony?

A. Such papers as the Iron Age, the Iron Trade Review, or, in the old days, there was one called the American Manufacturer, I think. Such papers as those.

Q. During what period covered by your testimony have

the Iron Age and the Iron Trade Review published prices?

A. The Iron Age ever since I became connected with the business or, as I recall, from the year 1876 until the present time.

Q. You do not attach any importance to those prices, as I understand your testimony, do you?

MR. SEVERANCE: I do not think you understood him to say that.

MR. DICKINSON: I think I know what I understood, and you don't.

By MR. DICKINSON:

Q. Will you answer the question or not?

A. I attach importance to those publications the same as I would to any hearsay evidence.

Q. To any hearsay evidence?

A. Yes.

Q. Then, if the hearsay evidence came from sources that were reliable you would regard it as credible, would you, and the facts stated as true?

A. If it came from the buyer or seller who actually made the transaction, that would have one degree of credibility; but if it came from another who had received it from a third party it would depend on circumstances as to what that credibility might be.

Q. Well, now, in speaking of these publications that have appeared from time to time in these trade journals, did you assume anything in regard to the sources from which they got their information, and anything in respect to their reliability?

A. I assumed that that was the published market price. I never undertook to believe that it was the actual buying or selling price.

Q. Then you distinguish between market price and buying and selling price?

A. Always.

Q. What is the difference, Mr. Roberts, between market price and buying and selling price?

A. It would depend upon every individual instance, as to the credit of the buyer, the time of delivery in which the goods

were required. There are a number of circumstances, such as the specifications which might be attached to the order. Each individual transaction would have to stand upon its own basis, whereas the market would be taken as a whole.

Q. Now, is there such a thing as a base price?

A. Yes.

Q. And those quotations that you referred to—do they give the base prices?

A. In some instances, where base prices are used.

Q. Generally where base prices are used, do they give them?

A. Usually. There would be a base price for bars, which represents certain sizes of bars, random lengths, and there are certain extras then for cutting to lengths, certain bearing extras for different lengths, and different sizes, different diameters of rounds.

Q. These base prices, were they the foundation from which other prices were figured, and were they or not accepted in the trade as the basis for figuring other prices?

A. In certain lines, yes; and under certain governing specifications.

Q. Generally speaking, when these trade papers published what were known to be base prices did they have any significance to the trade, and if so, what was it?

A. For instance, if a base price of bars was quoted that would be one thing. Other materials had no base prices. Plates had no base prices.

Q. I am speaking now of those things that had base prices, that were known to have base prices, and indications were given in respect to them. Did they have any acceptance when so published in these papers, with the trade, or not?

A. Not so far as buying and selling were concerned. For instance, a party wishing to buy a specification of bars, he might see the market price in the papers, but he would not send his order at that price without obtaining a quotation first.

Q. Then, according to your notion, they were perfectly useless, were they not?

A. No, sir.

Q. Now, then, explain just of what use they were.

A. They were of the same use as a thermometer would be in determining temperature.

Q. Well, if a thermometer is right, it is accepted generally, is it not?

A. Your feelings do not always agree with the thermometer.

Q. Yes, but the fact is that the temperature is indicated by a correct thermometer, is it not?

A. Yes, and I think that they correctly represented the market price.

Q. The market price?

A. Yes, the market price.

Q. The market base prices?

A. But the market price did not represent the buying and selling price.

Q. Then of what use was it with reference to the trade?

A. For general information.

Q. What is the information worth?

A. It gave the buyer or the seller some idea of what was generally going on.

Q. Is that so far as they were useful, to give him some idea of what was generally going on?

A. Yes, I think so.

Q. But they were no indication to him as to what the prices were?

A. As I said this morning, there was no uniformity in the establishment of these market prices. The reporter in one case might obtain positive definite information of the price at which a certain structure, for instance, had been sold, and he used that as his market figure. That market figure remained until some other equally important structure might make a different price. In other cases he sensed the market; he got the opinions of others, but it was not any uniform practice that he went out and obtained a market price and made this up absolutely from transactions which had already taken place.

Q. Now, you understand, do you, that my question relates to the publication of base prices?

A. The publication of base prices is another thing from what you started. You started with market price.

Q. I may have started with that, but that is where I am now. I am asking you of what acceptation and of what value, if any, the publication of base prices of various iron and steel products in these trade papers was to the people engaged in that business.

A. The publication of base prices would be of very little value compared with the market price.

Q. Just state what value it would be, then.

A. To whom.

Q. To the people I have indicated, who were buying and trading in these things.

A. It would depend entirely upon whether you were a buyer of that article. If you were a buyer of that article it would give you some indication of about the selling price, but not the selling price.

I think possibly we do not quite understand each other as to the base price.

Q. Possibly not. Now I will see if we can understand each other a little better. From your knowledge and experience in the iron and steel business, running over the period of time that you have just described, and from your knowledge of these trade journals and the publication of base prices of various products in iron and steel over the period of time indicated, what would you say is the value, if any, of these publications to the trade?

A. As indicating the opinion of the gatherers of news for these journals as to what they believed the value at that time was of the indicated material.

Q. And that is as far as you think the value of them extended?

A. I do.

Q. Were they not accepted generally?

A. At their worth.

Q. Wait a minute, please. Were they not accepted generally by people in the trade over the country as the base prices of the various articles that were obtaining at the respective times when they were published?

A. No, not to the buyer or the seller.

Q. Then, these gentlemen wasted very valuable time and these papers a great deal of valuable space, did they not?

A. No.

Q. Well, then, just tell me, will you, of what value to the trade, in your estimate, any of these publications were.

A. As I have said before, they indicated from their standpoint the general values prevailing at the time of their publication; it was never attempted to specify definitely that these were actually selling or buying prices.

Q. Were they approximate prices prevailing at that time?

A. At times, yes.

Q. Were they generally accepted as such?

A. At times, yes.

Q. At times?

A. Yes.

Q. But generally?

A. No, not generally.

Q. They were not generally?

A. No.

Q. So that they were generally discredited, were they?

A. No, they were not discredited.

Q. If they were not generally accepted, what were they?

A. You need not necessarily discredit a thing because you do not accept it. You verify it.

Q. That is one way of discrediting.

A. No, I would say that buyers and sellers, before proceeding with their transactions would verify the information which they had obtained from the trade papers.

Q. Then you do not think, do you, that those papers which published base prices from time to time were any index of the approximate sales that were taking place at that time, in those articles?

A. Yes, I think they were approximate.

Q. Approximate only?

A. Yes; in some instances they were exact.

Q. They were exact. Now, can you give me any estimate of what proportion of instances they were exact in, and in what proportion they were not?

A. No, sir; that is beyond me.

Q. Now, were these base prices that were published from time to time in these trade journals the prices at which the United States Steel Corporation sold?

A. I think that individual sales have always been made by the Steel Corporation at varying prices.

Q. Individual sales at varying prices?

A. Yes.

Q. What do you mean by that?

A. It may depend upon tonnage; it may depend upon the credit of the customer; a number of things govern individual sales, such as desirability of order and time of delivery.

Q. So that the published prices, then—did the Corporation have published prices?

A. Market prices.

Q. Did it publish market prices?

A. Such prices as the newspapers that I have referred to had, but a man has a price, and a bank has a discount rate, but your discount rate is not uniform to all customers of the bank, and if you had a market price or a selling price, will that price govern each individual order which you take?

Q. Then I understand you to say that throughout this period the Corporation had a published price, and that that did not indicate the prices at which they were selling?

A. Published prices to the same extent that I would term a newspaper has a market price. It affects conditions then existing, but each individual sale is made on its own merits.

Q. On its own merits?

A. It must necessarily be.

Q. And the published prices then of the Steel Corporation from time to time did not indicate necessarily the sales that were made to the various customers.

A. I never knew of any published prices.

Q. Announced prices?

A. Those were the announced market prices.

Q. Don't you know prices were announced by the Corporation?

A. No.

Q. In the trade journals?

A. No.

Q. And that these reporters came to the United States Steel Corporation from time to time and got announcements of prices?

A. Never from the Steel Corporation that I know of. They may have from their subsidiaries.

Q. How about Judge Gary. Don't you know that he from time to time gave announcements to these trade papers which were published in regard to prices?

A. Announcements as to what?

Q. As to prices at which commodities were selling?

A. No, I never knew of anything of that kind.

Q. You never knew anything of that kind that occurred?

A. No.

Q. How about Mr. Farrell?

A. I do not know of any that he announced.

Q. Did I understand you to say, Mr. Roberts, that the prices sold at by the Corporation were not uniform, but they varied according to the conditions of the individuals and to the particular trade that was made at a particular time? Is that a fact?

A. There is no such thing as a fixed price, absolutely fixed, that I know of.

Q. With a concern like the Steel Corporation, treating all customers alike, there is no such a thing as uniformity?

A. All conditions being equal there is.

Q. What do you mean by all conditions being equal?

A. Two customers having identical specifications, identical time for delivery, identical quality of material, identical credit, would at the same time receive no doubt the same quotation.

Q. You say no doubt?

A. Yes; I say positively.

Q. Are you speaking positively or theoretically?

A. No, positively. That would be the policy of the United States Steel Corporation.

Q. And how about the base prices? Were they uniform?

A. What do you mean by a base price? I don't understand.

Q. I understand that there is a base price made for certain articles of standard sizes and qualities, and then variations from that have certain additions, but that it all relates back to this base price as a starting point for calculating. If that is not right I would like you to tell what a base price is, because we would like to get it in the record.

A. I think you were probably considering one output, namely bars.

Q. No, I was not. I was considering rails among other things.

A. There is no base price for rails.

Q. Never heard of $28 base price for standard rails?

A. Yes; I have heard of $28 a ton for standard Bessemer steel rails.

Q. You never heard of it as a base price?

A. I used the term "base" yesterday in stating that in fixing the prices of rails we used $28 as a base price to start on.

Q. I am not asking you what you said yesterday. I am asking now whether you ever heard of $28 as being the base price for standard rails, and that from that base price for rails special qualities and specifications are figured, the additional cost of these variations being added to this base price?

A. No, I do not know that I ever have outside of my own testimony which I gave yesterday. Going on to say what I started——

Q. You want to answer further on my question?

A. Yes, I wish to answer your question further. Taking beams, for instance, beams from 3 to 15 inches, I am speaking of your question as to base prices.

Q. All right, if you think it is relevant, go ahead.

A. Beams, 3 to 15 inches, are always quoted at one price per pound. When you reach sizes above 15 inches they are at a higher price, but there is no base price for beams. There is no base price for plates. The base price of bars has been from time immemorial—we always had what is known as a

base price for bars, which covered certain sizes. Then, any variations from those sizes were known as extras. Sometimes for years the base price was disregarded entirely, and specifications were quoted on, based simply on their desirability. The base price, the term base price has very little significance in the trade.

Q. You speak of base price for bars from which the prices for variations of other bars were figured? You said that, didn't you?

A. Yes; that is correct.

Q. Can you name any other thing besides bars for which there was a base price and which was taken as a starting point for figuring the other prices of products that were correlated with them?

A. I do not know until you get off the line of things I am not so familiar with, in the way of lighter class products, of wire mills and sheets.

Q. I will repeat the question which I asked you and which I do not think you fully understood, whether or not you ever heard of $28 being a base price for standard rails?

A. I have said no.

Q. You have never heard of that?

A. I have said I have heard of the price of $28 per ton for standard Bessemer steel rails.

Q. Did you never hear of that being taken as the figure from which the price of other rails is estimated, allowing for the additional cost on account of the special specifications for other rails?

A. No; not beyond as I used it yesterday in my testimony.

Q. Just go on.

A. That is all I have to say.

Q. Do you mean to say that you decline to answer the question?

A. No, sir; I do not. I am trying to discover what you want to find out.

Q. Read the question to him. If he cannot discover it from that I will try to make it plainer.

(The question referred to was repeated by the stenographer.)

A. Standard Bessemer steel rails at $28.00 per ton represent the minimum price for certain chemical and physical requirements. Other specifications differing from these for Bessemer rails will command higher prices. They do not, however, necessarily have any connection one with the other.

Q. Is the price of these special kinds figured by taking the $28.00 price of the standard rail as the basis and then reaching the other price by adding the cost of the special additions or changes through these specifications that you refer to?

A. It is not, as I answered to the previous question.

Q. You say that the $28.00 is the minimum price for Bessemer standard rails of a certain quality. Has it not been the maximum price of Bessemer standard rails for that quality ever since 1901; and if it has not, state any instance that you know where Bessemer rails of that quality for which $28.00 has been accepted as the minimum price have been sold for a higher price, and by whom and to whom?

A. I have no knowledge of any variation in the price of Standard Bessmer steel rails during the period mentioned.

Q. When you say it was a minimum price, has it not also been a maximum price for that quality during that period?

A. It has.

Q. Are there not certain fixed sizes that are quoted for beams which are quoted in the trade papers as base, from which the others are figured?

A. I have already stated this morning, in reply to a former question, that beams from 3 to 15 inches in depth are quoted at a smaller price, while beams over and above 15 inches in depth are usually sold at a higher price.

Q. Is that price reached by taking the others as a base and then figuring the additional cost or not?

A. Not necessarily.

Q. How is it done, and how is it accepted and understood in the trade?

A. There is a relation between the two, but it varies with specifications, length and sizes.

I would further explain that by saying that there are only a very few manufacturers who make beams over fifteen inches

in depth, while there are a number who make them from three to fifteen inches. Those larger sizes are much more difficult sections to roll. They are not dependent on the smaller sizes at all, but are controlled by the few makers who make them, who fix their own price.

Q. There is no relation between them and the other price based upon the difference in cost of the additional work and material?

A. No; because they could not be made in the same mills that make the others. The cost of manufacture of those large sizes is an entirely different matter.

Q. How about plates? Are there certain fixed prices for plates for certain sizes?

A. No; not that I know of.

Q. Are there certain sizes upon which quotations are made?

A. Quotations are made from specifications, which usually contain varying sizes.

Q. But do the market quotations refer to any special sizes?

A. No. They may refer to what would be called normal sizes.

Q. What are they?

A. I could not give any definite arrangement. There would not be any definite arrangement. There would not be any definite arrangement to express in feet or inches; but if you had a specification of very different sizes, very few in number for each size, so that it required a great variation in kinds, that specification would be sold at a higher price than one where there were a great many uniform sizes, for instance——

Q. As to the publication in the trade papers in respect of normal size, what sizes are those?

A. There are none that I know of.

Q. There are none?

A. No, sir.

Q. And if you saw a publication of a price at such and such a time, would that indicate nothing as to sizes?

A. No, sir.

Q. What would it indicate?

A. It would indicate the price of plates.

Q. Without regard to size?

A. Unless the sizes might be abnormal; but there is no definite line which can be drawn.

(Whereupon a recess was taken until two o'clock p. m.)

AFTER RECESS.

PERCIVAL ROBERTS, JR.,

the witness under examination at the taking of recess, resumed the stand.

CROSS-EXAMINATION (Continued),

By Mr. Dickinson:

Q. When did you become a stockholder in the United States Steel Corporation?

A. Upon the exchange of the stock which I held in the American Bridge Company for the stock of the Steel Corporation in 1901.

Q. Did you at any time cease to be a stockholder, and if so, when?

A. No, sir; not entirely.

Q. You have been continuously?

A. I sold the bulk of these holdings when I retired from my directorship in 1902, but retained a portion.

Q. You have been continuously a stockholder from that time down to the present time?

A. I have.

Q. And are now?

A. I am.

Q. Up to the formation of the American Bridge Company your special experience, I suppose, in the iron and steel business was in connection with the Pencoyd, was it not, as a manufacturer?

A. My direct connection was in connection with the Pen-

coyd Iron Works, and also as part owner of certain blast furnaces in Pennsylvania.

Q. What were they?

A. The Morgan Iron Works at Lewistown, Pennsylvania.

Q. How long were you connected with them; what period?

A. Until their abandonment, some time about 1894.

Q. With that exception, was your practical experience entirely with the Pencoyd, down to the time that it went into the American Bridge Company, or did you have any practical experience with any other concern, and if so, what?

A. Only such experience as I might have from visits to other works, and consultation with their managers.

Q. Those were occasional, I presume, were they?

A. They were constant.

Q. What do you mean by constant? We have had quite a little dissertation on that subject once, and I would like to get you to define what you mean by constant.

A. They were constant, with varying fluctuations, I might say.

Q. It was sort of like intermittent fever or remittent fever?

A. Something like malaria; it came and went.

Q. I never heard of malaria going until it went for good, as I think you would find if you ever went into a malarial country.

A. Then you haven't had much experience with malaria, for I get it twice a year as regularly as the year comes around.

Q. Now, you say constantly with some intermissions; what character of works did you visit?

A. Prior to 1900 I was actively connected with various engineering societies—the Mechanical Engineers, the American Society of Civil Engineers, and the American Society of Mining Engineers. Those organizations had periodical meetings in various parts of the country for the reading of papers and the visiting of various works connected with the iron and steel industry. In that way I became more or less familiar with the various establishments, and also in those days we were very much smaller in number, and we had a large per-

sonal acquaintance with each other and frequently made visits to each other's establishments.

Q. The information you got, I suppose, was of a general character?

A. Some was general and some was detailed. We examined each other's drawings and plans and so on for the different departments, and exchanged plans in some cases.

Q. What else? Now that we have got into that, I would like to know just the extent and character of this information you got?

A. I think that would cover it.

Q. Now, before the Pencoyd went into the American Bridge Company and back to 1895, please state what products were produced by the Pencoyd and sold in the market. Mind you, I am speaking of producing and selling.

A. They produced a full line of structural shapes, comprising all sizes of beams, angles, channels and Z's, and flats up to 12 inches in width, rounds for shafting up to 6 inches in diameter, hammered car axles, car spring steel, and at times billets, tin plate bars and some blooms.

Q. To what extent, if any, were you a seller of tin plate bars from 1898 up to the time you went into the American Bridge Company?

A. I could not give the specific amount, as it was entirely a by-product of our concern and only sold at such times as we had not sufficient orders for finished material to use the product of our steel making furnaces.

Q. Can you give any idea at all?

A. I could not.

Q. Not even approximately?

A. No, I could not.

Q. Can you say positively during that period you did sell any tin plate bars?

A. I think very likely in 1897 and 1898 we did.

Q. My question was from 1898 down to the time of the formation of the American Bridge Company.

A. I said in 1897 or 1898.

Q. But about 1899 and 1900?

A. I could not say. I speak of that period as a time in which production was in excess of consumption.

Q. Well, at any time during that period?

MR. SEVERANCE: Pardon me. You mean 1897 or 1898?

THE WITNESS: Yes.

MR. SEVERANCE: I wanted to know which two years you meant.

By MR. DICKINSON:

Q. Did you at any time before you became connected with the United States Steel Corporation have anything to do with the manufacture or sale of rails?

A. I did not.

Q. How about merchant bars?

A. We sold a considerable tonnage.

Q. During what years?

A. Until the formation of the American Bridge Company.

Q. From what period up to what time?

A. From 1876.

Q. You sold constantly merchant bars from 1876?

A. From commencing about 1856; originally they were all wrought iron.

Q. Take the period from 1898 to the time you went to the American Bridge Company, you sold merchant bars?

A. We did; we sold some after the formation of the American Bridge Company.

Q. I am not asking about that; I am asking up to that time.

A. Yes.

Q. Were the amounts considerable or small?

A. It was a fair percentage of our output.

Q. Was it a regular part of your output?

A. Yes.

Q. Where did you sell them?

A. In the eastern markets.

Q. Where?

A. In the eastern markets.

Q. How far east?

A. Through New England, New York, Pennsylvania and some went to California by water.

Q. Well, from 1895 down to the time of the formation of

the American Bridge Company, did the Pencoyd make any hoops?

A. No.

Q. Did they make any bands?

A. No.

Q. Did they make any cotton ties?

A. No.

Q. Did you have any experience before you became connected with the United States Steel Corporation in the sales of hoops, bands or cotton ties or rails?

A. No.

Q. How about plates?

A. What we knew as grooved rolled plates up to twelve inches in width, yes.

Q. Mr. Roberts, what did you know, if anything, at the time it was in existence, about the wire nail pool in 1896?

A. Nothing.

Q. Were you engaged in the manufacture or sale of tin plates before your connection with the United States Steel Corporation?

A. No.

Q. Or sheet steel?

A. No.

Q. Mr. Roberts, what constituent first comes to your mind of those companies that went into the National Steel Company at its formation?

A. I do not think I quite understand the question.

Q. I will change the question. State what concerns at the time of its formation in February, 1899, were taken over by and came under the control of the National Steel Company.

A. The first one of the various concerns?

Q. Yes.

A. I cannot answer from memory. It is a matter of record.

Q. Can you name any of them from memory?

A. I cannot.

Q. Can you name from your knowledge of the steel and iron business, acquired over the long period in regard to which you have testified and acquired in the way in which you have testified, what various products were made by the

various concerns that came under the control of the National Steel Company at its organization in February, 1899?

A. Principally pig iron——

Q. Wait a minute. Read the question.

(The stenographer repeated the question as follows:)

"Q. Can you name from your knowledge of the steel and iron business, acquired over the long period in regard to which you have testified and acquired in the way in which you have testified, what various products were made by the various concerns that came under the control of the National Steel Company at its organization in February, 1899?"

MR. DICKINSON: Add to that: Giving the products for each concern separately.

THE WITNESS: With that addition I would answer no. I started to answer—will you divide the question in two?

By MR. DICKINSON:

Q. You can answer it as you please. I do not care to divide it.

A. I do know the principal products made by the constituent companies, but I do not know what percentages each individual constituent company made of those products.

Q. Name the products made at that time by any one of the constituent companies, giving the name of that company.

A. I have already said that I do not know at this time, or I do not remember at this time, the names of those companies in detail. They are a matter of public record, but that the principal output of those constituent companies, the principal output were pig iron and steel billets, and at times a small quantity of steel rails.

Q. Did all of them, according to the recollection which you are now giving, make steel rails?

A. No; one plant only made steel rails.

Q. Which one is that?

A. The one at Youngstown, I believe.

Q. What is the name of it?

A. I cannot give you the exact name.

Q. You mentioned billets. Did all of them make billets?

A. Those that had Bessemer plants made billets.

Q. Which ones were they?

A. I cannot give you the names.

Q. Which of them made pig iron?

A. All of the blast furnaces which went into the——

Q. Which of them had blast furnaces?

A. I cannot give you the details or the names.

Q. I understand you cannot give the amount of the several products made by each at the time they were taken over by the National Steel Company?

A. No, sir; I cannot.

Q. Can you give from your present knowledge the territories in which they were selling their respective products? If you know, just state where each one was selling its product.

A. Principally in the Central West and in the Pittsburgh District.

Q. Name those which sold in the Central West and those which sold in the Pittsburgh District, and what they sold, each?

A. Those territories were common to all.

Q. My question is for you to name those constituent companies which sold in the West and what they sold in the West.

A. I said all of those companies forming the National Steel Company sold in the Central West and the Pittsburgh District.

Q. All of them sold in both?

A. In both.

Q. Both the Central West and the Pittsburgh District?

A. They were principally located in Western Pennsylvania and Ohio.

Q. And all of them sold in the West?

A. In the Central West.

Q. And the Pittsburgh District?

How far do you go in your term Central West?

A. I should say the Central West extended between the western limits of Pennsylvania and to within a distance of probably 100 miles east of Chicago, or, in some cases, even to Chicago itself, as distinguished from——

Q. What did they sell in the Central West?

A. They sold pig iron and sold billets. Some of them sold some amounts of finished material of various kinds.

Q. Just state the various kinds.

A. There were some few that had hoop mills; some few had sheet mills, which were afterwards taken over by the Sheet Steel and by the Hoop Companies on their formation. They segregated those departments of the constituent companies of the National Steel and they were taken over and operated by the other three companies of what was known as the Moore group.

Q. Which of those that went under the control of the National Steel Company at its formation had hoop mills?

A. I cannot give you them in detail.

Q. Can you give any approximation of the amount of their products separately in hoops?

A. No.

Q. Which of them had sheet mills?

A. I cannot answer.

Q. Can you give any approximation as to that?

A. I cannot.

Q. Do you know the financial condition at the time the National Steel Company was formed of those several concerns, covering the amount of capital of each one, whether or not they were in a solvent or an insolvent condition? Can you give that information as to either of these points, as to any? If so, name them, and give the facts.

A. Prior to the formation of the National Steel?

Q. Just preceding it, yes.

A. No; I cannot.

Q. Do you know anything about that?

A. Only from hearsay.

Q. I am not asking for hearsay. I am asking if you know anything about it?

A. Personally, no.

Q. Personally you do not?

A. I never saw their books.

Q. You never saw their books? Do you know the capitalization?

A. I do not. Many of them were not incorporated and had no capitalization.

Q. Many of them were not incorporated?

A. No; they were personal partnerships.

Q. How many of them were taken over by the National Steel Company?

A. I do not know the number. It is a matter of public record.

Q. Approximately how many?

A. It is a public record. I would not attempt to state.

Q. You have no approximation to give us of that?

A. I have not.

Q. What proportion of them were unincorporated, and what proportion were incorporated?

A. I do not know.

Q. You can give us no information on that subject?

A. No.

Q. Mr. Roberts, do you know whether the Shenango Valley Steel Company, of New Castle, Pennsylvania, was taken over at that time by the National Steel?

A. I think that was one of the component companies of the National Steel.

Q. Do you know it was one of those taken over or not?

A. I think it was.

Q. Did that have any allied companies? If so, what were they?

A. I could not give you that. It is a matter of public record.

Q. Was it a corporation or a partnership?

A. I cannot answer that question.

Q. What products at that time, at the time it was taken over by the National Steel Company, were made by the Shenango Valley Steel Company and its allied companies, naming each, with the lines in which they were engaged?

A. I cannot answer that question.

Q. Mr. Roberts, you have referred in your testimony to Swank's Directory, and in one of your answers you said it was based partly on information derived from the United

States census, and in part, Swank's Directory. Do you know that publication?

A. Swank's Directory?

Q. Yes; it is called Directory of the Iron and Steel Works of the United States, published by Swank. The year to which I am referring is in the volume for 1898.

A. Published by the American Iron and Steel Association?

Q. Yes; you know that?

A. Yes.

Q. I will ask you to look on page 141 of the volume for 1898, and get you to read, which I will offer in evidence, what there appears under the heading of Shenango Valley Steel Company.

MR. SEVERANCE: Objected to as incompetent.

THE WITNESS (reading): "Shenango Valley Steel Company, New Castle, Lawrence County. Two completed works and one works building, all located at New Castle. Shenango Valley Steel Works; two 8-gross-ton Bessemer converters, built in 1892 and first blow made November 2, 1892; annual capacity, 400,000 gross tons of ingots; one 36-inch blooming mill and two 5-hole soaking pits; one bar mill, containing 12 trains of rolls driven by four engines; product, steel billets and 14-inch tinplate and sheet bars; annual capacity, 300,000 gross tons; fuel, coal and producer gas. Shenango Valley Tinplate Works; building"——

MR. SEVERANCE: Do you want him to read about any other company?

MR. DICKINSON: Right straight through.

MR. SEVERANCE: But to follow the example of my learned friend, I suggest it would not be responsive. It is about another company.

MR. DICKINSON: Do like I did—except.

MR. SEVERANCE: I will. You will accept it as responsive, will you?

MR. DICKINSON: Very well; let him go on. I have asked for it and I cannot get out of it.

THE WITNESS: You asked me to read about the Shenango Valley Steel Company. I have finished that.

By Mr. Dickinson:

Q. Read on. Where did you stop?

A. I stopped at the end of the matter relating to the Shenango Valley Steel Company.

Q. Where did you stop?

A. I stopped at the word "gas."

Q. That was the first time you shut it off. Now, will you just go on?

Mr. Severance: Is that a question?

By Mr. Dickinson:

Q. Go on, Mr. Roberts.

A. (Reading) "Shenango Valley Tinplate Works; building a plant to contain 30 sheet and 30 pair furnaces, 12 annealing furnaces, and 30 hot and 27 cold mills; product to be black plates for tinning; annual capacity, 60,000 gross tons. New Castle Wire Nail Works, (formerly operated by the New Castle Wire Nail Company,) built in 1887 and enlarged in 1891; rod mill added in 1889; 3 gas heating furnaces, 4 trains of rolls, (9, 10, 12 and 16-inch,) one hammer, and 300 wire-nail machines; product, wire rods, wire and wire nails; annual capacity, 90,000 gross tons of rods, 75,000 tons of wire, and 1,250,000 kegs of nails; fuel, coal; brand, "New Castle." William E. Reis, President; William Patterson, Vice-President; George B. Berger, Secretary and Treasurer; John Stevenson, Jr., Superintendent. See Furnaces in the Shenango Valley and Shenango Valley Tinplate Works in Pennsylvania."

Q. Now, will you turn to page 23 and near the top, beginning with the words "Shenango Valley Steel Company," please read down through the words "works in Pennsylvania."

A. (Reading:) "Shenango Valley Steel Company, New Castle, Lawrence county. Three stacks, all at New Castle. Neshannock Furnace, (formerly operated by the Crawford Iron and Steel Company,) one stack, 78x18½, built in 1872; first put in operation December 1, 1872; remodeled in 1883; four Whitwell stoves, three 60x17 and one 60x18, and one improved Massicks & Crooks stove, 75x19½. Shenango Furnaces, (formerly called the Norway Furnaces and operated

by The Norway Iron and Steel Company,) two alternate stacks, each 80x17$^{3}_{4}$; one, built in 1872 and put in blast in May, 1872, entirely rebuilt in 1891; and one built in 1889 and put in blast September 6, 1889; three Cowper stoves. Fuel, coke; ore, Lake Superior; product, Bessemer pig iron consumed by the company in its steel works; annual capacity: Neshannock Furnace, 115,000 gross tons; Shenango Furnaces, 90,000 tons for each stack. Brands, 'Neshannock' and 'Shenango.' Active in 1898. See Shenango Valley Steel Company in Western Pennsylvania. See Shenango Valley Tinplate Works in Pennsylvania."

Q. Please turn to page 250 and read there what occurs under the Shenango Valley Tin Plate Works.

A. (Reading:) "Shenango Valley Tinplate Works, Shenango Valley Steel Company, New Castle, Lawrence county. Building a tinning plant to contain 40 tinning sets; product, tin and terne plates; estimated weekly capacity, 27,000 boxes. Fuel, coal. Will make black plates. See Shenango Valley Steel Company in Western Pennsylvania for a list of officers. See Furnaces in the Shenango Valley, Pennsylvania."

Q. Please turn to page 363, near the bottom, and read what it has under Shenango Valley Steel Company, under the head of blast furnaces on that page, beginning down near the bottom, Shenango Valley Steel Company.

A. (Reading) "Shenango Valley Steel Company, New Castle, Lawrence county. Company expects to install new machinery at its Shenango Furnaces in 1899; will then change the two alternate stacks to two separate furnaces."

Q. Now, Mr. Roberts, you have been speaking about integration at some length. Do you know the New Castle Wire Nail Works?

A. I do not.

Q. Do you know that they were owned by the Shenango Valley Steel Company?

A. I did not know them by actual visiting. I do not know without reference that they were owned by them.

Q. Don't you know that they were sold by the Shenango Valley Steel Company to the American Steel & Wire Company?

A. That is one of the character of transactions which I spoke of a few moments ago, in which the National Steel Company segregated certain of these finishing establishments that belonged to its constituents, and they were operated by the other corporations of the Moore group.

Q. Was the American Steel & Wire Company one of the Moore group?

A. No; it was not one of the Moore group.

Q. Then don't you know that the Shenango Valley Steel Company sold the Newcastle Wire Works to the American Steel & Wire Company?

A. I do now that you tell me, yes.

Q. Wasn't the Shenango Valley Steel Company making a great variety of products?

A. They were contemplating it rather than doing it in actuality.

Q. You mean to say that from the statements shown here those things were in mere contemplation and not in reality?

A. No. They were building. They were not established industries.

Q. What were not established industries?

A. The tin plate plants and those more highly finished products than billets, which I have read in these pages.

Q. How many wire and wire nails?

A. They made some wire nails.

Q. What does that show to be the amount of wire nails?

MR. SEVERANCE: I suggest you permit him to finish his answer.

MR. DICKINSON: All right.

THE WITNESS: I shall have to refer to this book.

By MR. DICKINSON:

Q. Does it show on page 142 that the New Castle Wire Nail Works, formerly operated by the New Castle Wire Nail Company, was enlarged in 1891?

A. What page is that?

Q. Page 142.

A. I am just coming to that.

Q. Towards the top, "rod mill added in 1889; 3 gas heat-

ing furnaces, 4 trains of rolls, (9, 10, 12, and 16-inch,) one hammer, and 300 wire-nail machines; product, wire rods, wire, and wire nails; annual capacity, 90,000 gross tons of rods, 75,000 tons of wire, and 1,250,000 kegs of nails"; isn't that what it shows?

A. Well, it shows that if that wire went into nails it did not then produce wire. Its annual capacity, you see, of rods is 90,000 tons. Therefore it could not have made 75,000 tons of finished wire for the market and 1,250,000 kegs of nails.

Q. Could they not have bought some and added to what they made?

A. Exactly.

Q. What I am asking you is whether or not you undertake to say that they did not make nails and wire and rods at that time?

A. Oh, no; I did not undertake to say that.

Q. You did not undertake to say that?

A. I said they did.

Q. How about making tin plate before the American Tin Plate Company was formed; do you know?

A. From the statements in this book I do not think they did. They here have a statement, on page 142——

Q. Do you know anything about——

MR. SEVERANCE: One moment. I object to your interrupting the witness continually until he has finished his answer.

THE WITNESS: They here have a statement on page 142, where they speak of the product being black plate for tinning, which was in contemplation. On one of the other pages which I read, on page 250, Shenango Valley Tin Plate Works, building a tinning plant to contain forty tinning sets.

Q. What was that?

A. That was in this same volume.

Q. What year?

A. 1898.

Q. Do you know that they were not making tin plate?

A. Not at that time.

Q. No; but at the time it was taken over, later, at the time

the Shenango Valley sold it to the American Steel & Wire Company?

MR. SEVERANCE: What did they sell to the American Steel & Wire Company?

MR. DICKINSON: No. I mean to the American Tin Plate Company.

By MR. DICKINSON:

Q. Do you know anything about that?

A. I do not positively.

Q. Do you know anything about the New Castle Sheet & Tin Plate Company?

A. You mean as to its product or output?

Q. Yes; do you know, yourself?

A. As to amount?

Q. Yes; as to amount.

A. No; I don't know the amount.

Q. Do you know when it began to make the several products?

A. As to the actual dates, no.

Q. Do you know to what interest they belonged?

A. It was one of those plants which became part of the Tin Plate Company.

Q. What did it belong to before it became a part of it?

A. I cannot answer that question.

Q. Mr. Roberts, I will ask you to turn to page 169 and page 170, and I will offer in evidence and ask you to read there. I will ask you to read what occurs under the head of "Aetna Iron & Steel Company," reading down to the word "Beaver," on page 170:

A. (Reading:) "Aetna-Standard Iron and Steel Company, Bridgeport, Belmont county. Five works: Three works at Bridgeport, Belmont county, and two works at Mingo Junction, Jefferson county. Aetna Works, at Bridgeport, built in 1873 and put in operation January 1, 1874; enlarged in 1883 and 1891; 1 reverberatory and 4 regenerative gas heating furnaces, 6 sheet mill softening, 4 sheet mill pair, and 6 box annealing furnaces, and 11 trains of hot rolls (one 20-inch muck, one 16-inch bar, and one 8 and one 9-inch guide,

all 3-high; one 21, two 24, and two 26-inch sheet; and two 24-inch black plate, the latter equipped with 2 pair heating and 2 softening furnaces and 3 stands of cold rolls); product, steel bars, sheets, plates, bands, light T rails, angles, tees, channels, and miscellaneous shapes; annual capacity, 50,000 gross tons; brand, 'Aetna'; (formerly operated by the Aetna Iron and Steel Company). Standard Sheet Mill Works, at Bridgeport, built in 1882-3 and put in operation April 1, 1883; remodeled in 1888 and 1892; 7 pair heating furnaces, 7 softening furnaces, 7 single and 3 double annealing furnaces, 7 trains of finishing rolls, (one 22, one 23, four 24, and one 26-inch,) and one stand of cold rolls; product, black plates, steel sheets, galvanized iron, corrugated iron, and other forms of roofing iron; annual capacity, 14,000 gross tons; brand, 'Standard'; (formerly operated by The Standard Iron Company). Standard Black Plate Mills, at Bridgeport, formerly operated by The Standard Iron Company as a sheet mill; 4 pair heating, 4 softening, and 1 single and 2 double annealing furnaces, four 24-inch black plate hot mills, and five 22-inch cold mills; product, black plates for tinning; annual capacity, 7,200 gross tons. Fuel used in the three works described above, natural gas, producer gas and coal. Junction Works, at Mingo Junction, (two works,) formed by the consolidation of the Junction Iron Company and the Laughlin and Junction Steel Company in September, 1894; original plant (formerly operated by the Junction Iron Company) built in 1882 and put in operation November 1, 1882; remodeled in 1895; now consists of 2 gas heating furnaces, one 3-high 20-inch mill, and one continuous and Belgian mill; product, merchant steel bars; annual capacity, 40,000 gross tons; (cut-nail factory, containing 142 nail machines and a nail plate train, abandoned in 1895). Steel department (formerly operated by the Laughlin and Junction Steel Company), built in 1885-6; two 5-gross-ton Bessemer converters; first blow made February 8, 1886; one 5-hole soaking pit and a blooming mill; product, blooms, slabs, and billets; annual capacity, 120,000 gross tons. The steel department is being modernized, and is to contain two 10-gross-ton Bessemer converters, complete new blooming mill, labor-saving appliances, etc.; will be in opera-

tion in July or August, 1898, and will have an annual capacity of from 300,000 to 400,000 gross tons of slabs and billets. An open-hearth steel plant may also be added. When the improvements in the steel department are completed the two 5-gross-ton Bessemer steel converters will be abandoned. Fuel at the Junction Works, coal and producer gas. (The Junction Works were consolidated with the works of the Aetna-Standard Iron and Steel Company on July 1, 1897.) W. T. Graham, President; John A. Topping, Secretary; J. J. Holloway, Treasurer; B. M. Caldwell, General Manager. See Furnaces in the Miscellaneous Bituminous list in Ohio. See Tinplate Works in Ohio."

Q. I will ask you now to read from page 51, under the heading "Aetna-Standard Iron," down through that paragraph.

A. (Reading): "Aetna-Standard Iron and Steel Company, Bridgeport. Three stacks, two owned and one leased. Mingo Furnaces, at Mingo Junction, Jefferson county, two stacks: No. 1, 75 x 17, built in 1871 and rebuilt in 1886; No. 2, 75 x 17, built in 1872 and rebuilt in 1886; four Gordon-Whitwell-Cowper stoves; fuel, Connellsville coke; ore, Lake Superior; product, Bessemer pig iron; annual capacity of each furnace, 80,000 gross tons; company has sufficient machinery to run one furnace only at a time. Contracts have been placed for part of the machinery necessary to operate both furnaces at Mingo Junction; Furnace No. 2 may be raised and its capacity increased. (Operated by the Junction Iron and Steel Company until its consolidation with the Aetna-Standard Iron and Steel Company on July 1, 1897.) Jefferson Furnace, at Steubenville, Jefferson county, leased from the Jefferson Iron Works: one stack, 78 x 18¼, built in 1865 and rebuilt in 1889; four Gordon-Whitwell-Cowper stoves; fuel, Connellsville coke; ore, Lake Superior; product, Bessemer pig iron; annual capacity, 80,000 gross tons.—Active in 1898. See Rolling Mills and Steel Works in Ohio, (Ohio River Counties District). See Tinplate Works in Ohio."

Q. Now turn to page 253 and read there under the head-

ing of Aetna Standard Iron & Steel Company, through the first paragraph.

A. (Reading):

"Aetna Standard Iron & Steel Company, Bridgeport, Belmont county. Tinning plant added to rolling mill in 1894; first tin and terne plates made in May, 1894; 8 sets, 6 for tinplates and 2 for terne plates; weekly capacity, 4,750 boxes of 14x20 tin and terne plates. Fuel, natural gas and coal. Brands, for tinplates, 'Aetna' for coke and 'Aetna,' 'Aetna A,' 'Aetna AA,' and 'Aetna AA1' for charcoal; for terne plates, 'Belmont,' 'Belmont Special,' 'Belmont Best,' and 'Standard.' Makes black plates. Selling agents, Harrington, Robinson & Co., Boston; A. Schroeder, New York; Simpers & Brother, Philadelphia; H. L. Green & Co., Chicago; Good & Waterman, St. Louis; L. A. Hastings & Co., Denver; T. H. Speddy, San Francisco. See Rolling Mills and Steel Works in Ohio (Ohio River Counties District) for a list of officers. See Blast Furnaces in Ohio, (Miscellaneous Bituminous list.)"

Q. What mills and furnaces did the Ohio Steel Company have in 1898, and what mills and furnaces was it building in 1898, and what was the capacity of its several mills and furnaces?

A. For an answer to that question I would refer to the Iron & Steel Directory of the United States for the year 1898.

Q. Now, I would like for you to see how much you can tell from your knowledge, derived from your long experience in the business and the ability that you acquired thereby for giving an opinion on the iron trade and the prices of the various iron and steel products. Now, from that information and education and learning, independent of what these statistics show, I would ask you to answer my question if you can.

A. From memory I cannot.

Q. Can you give any information from memory on that subject?

A. From memory, no.

Q. Now, then, I will help it out. I will ask you to turn to page 49 of the same book and read there under the word "Projected," down through those two paragraphs.

A. Before reading, in reply to your question—I cannot from my experience answer what may have been projected at that time other than what might have been published. I read from under the heading "Projected."

"The Ohio Steel Company, Youngstown, Mahoning County, contemplates erecting in 1898 two modern blast furnaces at Youngstown, Mahoning County. See Rolling Mills and Steel Works in Ohio, (Mahoning Valley District).

"Number of coke furnaces in Mahoning Valley, including furnaces in Columbiana county: 13 completed stacks and 2 stacks projected."

Q. Now, we will turn from things projected to things in posse, and things in esse.

A. In se.

Q. I will ask you to turn to page 163 and read there what you might have recollected if you had known.

MR. SEVERANCE: It would be a matter of recollection if he recollected it.

MR. DICKINSON: No, he could not have recollected it if he did not know it.

MR. SEVERANCE: He could not have recollected it if he did not recollect it.

MR. DICKINSON: I do not think it is necessary to characterize that.

THE WITNESS: What shall I read, sir?

By MR. DICKINSON:

Q. Read from the beginning, "Ohio (The) Steel Company," that paragraph.

A. (Reading): "Ohio (The) Steel Company, Youngstown, Mahoning county. Built in 1893-4; two 10-gross-ton acid Bessemer converters; first steel made February 4, 1895; four 4-hole soaking pits, 4 trains of rolls, (one 34-inch blooming and three 24-inch roughing and finishing), and one 1,500-lb. hammer; product sheet and tinplate bars, slabs, billets to 1½ inches square, and T rails; annual capacity, 500,000 gross tons of ingots or 450,000 tons of rolled products. Fuel, coal. Contemplates erecting several basic open-hearth steel furnaces. Henry Wick, President; J. G. Butler, Jr., Vice-Presi-

dent; William H. Baldwin, Secretary; Thomas McDonald, superintendent. See Projected Blast Furnaces in Ohio, Mahoning Valley District."

By Mr. Dickinson:

Q. What mills and furnaces did the Sharon Iron Company, Limited, have?

A. May I have that previous question?

Q. I just asked you to read it.

A. I thought you asked me if I could recall things in existence as contrary to things projected.

Q. Do you want to know what has been asked you? Do you want to read back?

A. I thought when you asked me to read it that you said first you called my attention to something that was in existence, whether I remembered it?

Mr. Severance: He did; he said in esse.

By Mr. Dickinson:

Q. I am asking now, do you know what mills and furnaces the Sharon Iron Company, Limited, had in 1898?

A. This is the Ohio Steel Company.

Q. Yes, but I am through with that. I am asking you now do you know what mills and furnaces the Sharon Iron Company, Limited, had in 1898, and do you know what mills and furnaces, if any, it was building in 1898, and what was the capacity of its several mills and furnaces, existing and projected, if any?

A. I do not, without reference to this directory.

Q. Without reference to that, from your general knowledge of the steel business extending over the period as you have described it, you cannot give us any information on that subject?

A. Not from memory.

Q. Then I will ask you please to turn to page 140, and I will offer that in evidence and ask you to read what occurs under the heading of—down towards the bottom—Sharon Iron Company, Limited. Go through the second paragraph.

"Sharon Iron Company, Limited, Sharon, Mercer county. Built in 1850; 10 single and 14 double puddling furnaces, 12

heating furnaces, and 11 trains of rolls (one 8-inch guide, one 12, one 16, and one 18-inch bar, one 20 and three 22-inch sheet, and one 24-inch plate, hot, and two 24-inch sheet, cold); product, bar, band, hoop, tank and sheet iron and steel, and light T-rails; annual capacity, 30,000 gross tons. Uses producer gas in heating furnaces. A galvanizing plant is connected with the works. F. H. Buhl, President; T. D. Buhl, Vice-President; V. Preston, Secretary; David Adams, Treasurer. See Furnaces in Shenango Valley, Pennsylvania."

Q. I will ask you to turn to page 22. I offer that in evidence, and ask you to read what occurs there under the head of Sharon Iron Company, Limited, one paragraph.

A. (Reading): "Sharon Iron Company, Limited, Sharon, Mercer county. Two stacks; one, 72 x 16, built in 1865 and rebuilt in 1887; and one, 72 x 16, built in 1866 and enlarged in 1883; Whitwell stoves; fuel, coke; ore, Lake Superior; specialty, basic open-hearth pig iron; total annual capacity, 73,000 gross tons. Brand, 'Shenango.' Active in 1898. See Rolling Mills in Western Pennsylvania."

Q. What mills and furnaces did the Bellaire Steel Company have in 1898, and what mills and furnaces was it building in 1898, and what was the capacity of its several mills and furnaces?

A. The same answer as to the previous question.

Q. Then I will ask you to turn to page 170 of the same volume, which I offer in evidence, and ask you to read what occurs in the last paragraph, the Bellaire Steel Company.

A. (Reading): "Bellaire Steel Company, Bellaire, Belmont county. Rolling mill built in 1867 and put in operation in February, 1868; remodeled in 1893 and rebuilt in 1895; 3 trains of 24-inch rolls, with five driven roller and chain transfer tables; product, sheet and tinplate bars, skelp steel, bridge plates, etc.; annual capacity, 200,000 gross tons. (Cut-nail factory, containing 125 cut-nail machines, abandoned.) Bessemer steel works built in 1883-4 and rebuilt in 1897; two 10-gross-ton converters, 3 soaking pits, and a blooming mill; first blow made April 28, 1884; product, soft steel blooms, billets and slabs; annual capacity, 200,000 gross tons. Fuel, natural gas and coal. (Name changed from Bellaire Nail

Works to Bellaire Steel Company in February, 1896.) J. R. McCortney, President; A. B. Carter, Secretary and Treasurer. See Bellaire Furnaces in Miscellaneous Bituminous list in Ohio."

Q. Mr. Roberts, please state what mills and furnaces King, Gilbert & Warner Company had in 1898 and what mills and furnaces they were building in 1898, and what was the capacity of its several mills and furnaces?

A. The same answer as to the preceding question.

Q. I will ask you then to turn to page 166, which I offer in evidence, and ask you to read what occurs there about the middle, under the heading of "King, Gilbert and Warner Company."

A. (Reading):

"King, (The) Gilbert and Warner Company, Columbus, Franklin County. Built in 1894-5 and put in operation May 2, 1895; two 4½-gross-ton Bessemer steel converters, one soaking pit, one heating furnace, and 3 trains of rolls (one 32-inch reversing blooming, one 20-inch sheet bar, and one 24-inch small billet); product, steel slabs, billets, and sheet bars; annual capacity, 130,000 gross tons. Fuel, coal. R. M. Gilbert, President; J. H. King, Vice-President; D. W. Singleton, Secretary; T. J. Gilbert, Treasurer. See Furnaces in Ohio, (Miscellaneous Bituminous list)."

Q. Also page 51, beginning near the bottom, under the same head.

A. (Reading):

"King, (The) Gilbert and Warner Company, Columbus, Franklin county. Two stacks; Franklin Furnace, 75x17½, completed in November, 1873; rebuilt in 1892 and 1895; Massicks & Crooke stoves, each 65x18; fuel, Pocahontas coke; ore Lake Superior; product, Bessemer pig iron; annual capacity, 90,000 gross tons; brand, 'Franklin.' Steelton Furnace, 80x18, built in 1897 and first blown in August 12, 1897; three Massicks & Crooke stoves, each 75x19½; fuel, Pocahontas and New River coke; ore, Lake Superior; product, Bessemer pig iron; annual capacity, 120,000 gross tons, brand, 'Columbus' (Moxahala Furnace, at Moxahala, Perry county, Ohio,

one stack, 70x16½, built in 1877-8, abandoned and dismantled in 1897)."

Q. Read on, "Active in 1898."

A. (Reading):

"Active in 1898. See Rolling Mills and Steel Works in Ohio, (Interior Counties District)."

Q. What mills and furnaces did the Buhl Steel Company have in 1898, and what mills and furnaces were they building, in 1898, and what was the capacity of its several mills and furnaces?

A. The same answer.

Q. Please turn to page 133, the same volume, which I offer in evidence and ask you to read what occurs there under the head of Buhl Steel Company, Sharon, Mercer county, near the top of the page.

A. (Reading):

"Buhl Steel Company, Sharon, Mercer county. Built in 1896-7 and first put in operation in May, 1897; six 30-gross-ton basic open-hearth steel furnaces; first steel made May 24, 1897; annual capacity, 110,000 gross tons of ingots; three 4-hole soaking pits, one 35-inch blooming mill, and one 3-high 27-inch finishing mill, having connected with it a 24-inch bull-head mill; product, blooms, slabs, sheet and tinplate bars, and small billets; annual capacity, 100,000 gross tons. Fuel, producer gas. F. H. Buhl, President; Theo. D. Buhl, Vice-President; Veryl Preston, Secretary; David Adams, Treasurer."

Q. Mr. Roberts, doesn't it appear that a majority of these concerns had finishing mills connected with them; if not, just mention which ones did not?

A. The ones I have read did not.

Q. How about the others?

A. I shall have to go back over them and check them up, which I can do.

Q. I will ask you to do it because it is of importance and we want to get your knowledge on that subject.

A. Very good.

MR. SEVERANCE: You are not asking for his knowledge.

You are asking for the directory's knowledge. He has read them all to you.

THE WITNESS: Buhl had none.

By MR. DICKINSON:

Q. How about the Shenango Valley?

A. The Shenango Valley had the New Castle Nail Works.

Q. Take page 250.

A. This was not in existence. The Shenango Valley Tin-plate Company was building.

Q. Before it went into the National Steel wasn't it built?

A. I cannot answer that.

Q. You do not know anything about it?

A. No.

Q. It did have nail works?

A. The Shenango Valley had the New Castle Nail Works.

Q. It had something beside furnaces, did it?

A. The Shenango Valley Steel Company?

Q. The Shenango Valley Steel Company.

A. Oh, yes; it had Bessemer works; made Bessemer steel.

Q. Turn to page 253, the Aetna-Standard.

A. Yes; it made tin and terne plates.

Q. Then on pages 169 and 170.

MR. SEVERANCE: Which is that, the one you just spoke of that had terne plates? Is that the one at Bridgeport, Ohio?

MR. DICKINSON: The Aetna.

MR. COLTON: The book will show.

THE WITNESS: The Aetna-Standard Iron and Steel Company, Bridgeport.

MR. SEVERANCE: That is at Bridgeport?

THE WITNESS: Yes. They had a tinning plant.

MR. SEVERANCE: That is the one you said went into the Tin Plate Company?

MR. COLTON: I think it did.

THE WITNESS: Yes. The finishing mills belonging to the Standard went into the other companies of the Moore group.

By MR. DICKINSON:

Q. But the question is, what product did it make; what finished products?

A. As of the year 1898 it was given in the directory that the Aetna-Standard had a mill at Bridgeport, Ohio, making tin plate.

Q. Then on pages 169 and 170?

A. It also had a mill making merchant steel bars.

Q. And any semi-finished products?

A. Oh, yes; a number of different works made billets and slabs for tin plate bars.

Q. And also sheet and tin plate bars?

A. Sheet and tin plate bars. This group of plants made the semi-finished material for the other Moore plants.

Q. Did it not make bands and light rails?

A. It did, at times.

Q. And angles and tees?

A. It names them in this list.

Q. Angles and tees and channels?

A. Those were not structural sizes; they were light sizes of angles and tees, used more for bedsteads and things like that.

Q. Mr. Roberts, of your own knowledge, have you any knowledge with regard to the products of these several concerns at that time, outside of what is shown by these statistics?

A. I know that in the matter of structural material they did not make structural material; that we did not meet them in competition.

Q. But how as to other things?

A. I cannot answer that, other than from the information I gather from this.

Q. That is all the knowledge you have now, and all that you can give us in regard to the several products of those several concerns about which I have asked you?

A. That is all the knowledge which I have at this time.

Q. Well, did you have any more knowledge about it yesterday or the day before?

A. I think I had more knowledge about it when I was actively engaged in the steel business prior to 1900 than I have now.

Q. But you have as much knowledge on the subject now as you have had within a week, haven't you?

A. Yes; more, I think.

By Mr. Colton:

Q. The Ohio Steel Company on page 163.

A. They made semi-finished material in the shape of slabs, billets, and so forth, and could make and did make at times some T rails. I know this concern; I recall it very well.

By Mr. Dickinson:

Q. Look at page 140, the Sharon.

A. Sharon Iron Company.

Mr. Colton: Limited; there may be two there.

Mr. Dickinson: At the bottom of page 140, and runs over to 141.

The Witness: They made finished material, but its product was iron.

By Mr. Dickinson:

Q. Did it make T rails?

A. Light T rails; very small rails.

Q. Bands and hoops?

A. Bar, band, hoop, tank, sheet iron and steel and light T rails. It was a wrought iron establishment, containing ten single and fourteen double puddling furnaces.

Mr. Severance: Which company is that?

The Witness: The Sharon Iron Company, Sharon, Mercer County.

By Mr. Colton:

Q. Page 170, the Bellaire Steel Company.

Mr. Severance: Is that the one that went into the Steel Hoop Company?

Mr. Colton: I think it did later, Mr. Severance; I am simply answering from my recollection.

Mr. Severance: At the time it was formed.

By Mr. Dickinson:

Q. Page 170, Bellaire.

A. The finishing departments of these plants went into the finishing groups of the Moore works.

Q. At this time Bellaire was not making sheet and tin plate bars? I have come to another one now.

A. I was speaking of Sharon.

Q. No, Bellaire.

A. Now we come to page 170, Bellaire. Product, sheet and tin plate bars.

Q. And skelp?

A. Skelp; that is a semi-finished material; skelp steel, bridge plates. Bridge plates would be finished material; cut nail factory, containing 125 cut nail machines. Oh, that is abandoned.

Q. King, Gilbert & Warner, page 166.

A. Steel slabs, billets and sheet bars. That is semi-finished material. The finished material of these works was a small percentage of its pig iron and semi-finished products.

Q. You say one of them was still making pig iron products, not steel?

A. Wrought iron products.

Q. Wrought iron and not steel?

A. Not steel.

Q. Do you know how many T rails the Ohio company was capable of making, what its capacity was at that time, 1898?

A. It would depend upon whether it ran on rails or used part of its product for billets.

Q. Take its machinery; do you know what its capacity was for producing rails?

A. It would depend upon whether it used its machinery for producing billets or rails; it had to do one or the other, it could not do both.

Q. I mean machinery particularly adapted for producing rails; do you know its capacity for producing rails?

A. I can give it from the directory.

Q. Can you give it from your knowledge?

A. Not without reference to the book.

Q. Suppose you go over there.

A. What page is that?

Q. Page 163.

A. The capacity there is given as 450,000 tons of rolled products.

Q. Now, do you know whether or not any of those concerns that we have mentioned materially changed their character between 1898 and the time they were taken over by the National Steel Company?

A. That is practically coincident with the time they were taken over by the National Steel.

Q. When was the National Steel formed?

A. In 1898 or 1899.

Q. It was formed February, 1899, was it not?

A. That is my recollection; about that time.

Q. Do you know what proportion of billets and blooms made by these several concerns were manufactured by themselves, and what proportion was sold to other manufacturers?

A. What proportion, you mean, were manufactured into finished material?

Q. Yes.

MR. SEVERANCE: As of what date?

MR. DICKINSON: At the time they were taken over by the National Steel.

By MR. DICKINSON:

Q. If so, give the proportion.

A. A larger proportion was sold than used by themselves.

Q. Was that true of the Aetna?

A. I cannot answer individually.

Q. Well, which ones that you know of individually sold a larger proportion of the billets and blooms than they used in manufacturing?

A. That I cannot answer except as a general proposition, as a whole.

Q. You cannot give any percentage as to any single one?

A. No.

Q. But as to the whole, you venture an opinion, do you?

A. I state that as a fact.

Q. Did you know the amount produced by them?

A. I did not.

Q. Do you know where they sold it?

A. In that territory, the Middle West.

Q. Were you acquainted, at that time, with the markets?

A. I was.

Q. Of these several concerns?

A. I was very familiar with the general steel market at that time.

Q. Did you know the market?

A. I was a buyer of billets myself at that time.

Q. Did you know the market where in 1898 these several concerns sold their billets and blooms?

A. I did.

Q. Did you know where they sold their finished products?

A. Generally, yes.

Q. Now, take the Aetna; what proportion of the output in billets and blooms did they sell, and where did they sell them?

A. I don't know. They were sold in the Central West or Pittsburgh District. As to the proportion, I do not know.

Q. All of these concerns sold their billets and blooms, did they, in the Central West and the Pittsburgh District?

A. Those that had a surplus above their own requirements, yes.

Q. And you cannot name a single one that had?

A. A surplus?

Q. Yes.

A. Not individually; no.

Q. As I understand you, Mr. Roberts, you are not able to name a single one of the constituents of the National Steel Company with respect to which you can state where in 1898 that particular company sold its billets and blooms, and the percentage of its output in billets and blooms which it did sell?

A. In figures, no.

Q. Can you approximate it?

A. In figures, no.

Q. Mr. Roberts, you testified on your direct examination, page 9179, as follows:

"The other concerns like the National Steel were composed largely of blast furnaces that had lost their custom of

pig iron and who found themselves compelled to produce instead of pig iron, billets and blooms for sale to those who had formerly used wrought iron."

Now, I want you to name which of the concerns that went into the National Steel Company had largely blast furnaces that had lost their custom for pig iron and found themselves compelled to produce instead of pig iron, billets and blooms for sale to those who had formerly used wrought iron?

A. I would refer to the extracts which I have read here from the directory of the American Steel & Iron Association for the year 1898 in full confirmation of the statement which you have just read.

Q. Without that I wish you to state which of the concerns that went into the National Steel Company were composed largely of blast furnaces that had lost their custom for pig iron and found themselves compelled to produce instead of pig iron, billets and blooms for sale to those who had formerly used wrought iron?

A. I will make the same answer to that as to the previous question.

Q. Is that the only answer you can make?

A. That is the only answer I can give you, sir.

Q. On your general knowledge of the business and on your experience in it, and on your general knowledge of products and sales acquired throughout the period of time from 1895 down to the time of the formation of the National Steel Company, can you state what concerns composed principally of blast furnaces went into the National Steel Company, which had lost their custom for pig iron and found themselves compelled to produce instead of pig iron, billets and blooms for sale to those who had formerly used wrought iron?

Mr. Severance: I think I will make an objection that that is the third time that question has been asked in substantially the same language. I see no object in having it asked so many times. He has answered it twice in the same way.

Mr. Dickinson: Then it would be no trouble for him to answer it again. I think it is a little different.

Mr. Severance: It is wasting a great deal of time.

By Mr. Dickinson:

Q. Will you answer it, Mr. Roberts?

A. I should make the same answer as to the previous question.

Q. That is the only answer you can make?

A. The only answer that I can give you in detail.

Q. When did you examine Swank's Directory on this subject?

A. For details I corroborated my own general knowledge probably a year and a half ago. Since then I have not examined it until this afternoon, when I read the extracts which I read. All those connected with the iron and steel trade during the period you have referred to, from 1895 to 1898, were fully alive to the discussion, the very general discussion which went on at that time, as to these very changes to which I have referred. It was not any individual opinion of my own, but a very vivid recollection of the consensus of opinion among engineers as of that date.

Q. So your answer, then, was based not upon your own recollection of the knowledge you had of these several concerns at the time they went into the National Steel Company, but from the consensus of opinions of engineers, was it?

A. No. No; my own opinion coincided with theirs.

Q. Just state, then, on what you base this statement that I have just read to you.

Mr. Severance: Will you kindly read the statement to him, so as he may see what it is?

Mr. Dickinson: Yes.

By Mr. Dickinson:

Q. The statement is: "The other concerns like the National Steel were composed largely of blast furnaces that had lost their custom for pig iron and who found themselves compelled to produce instead of pig iron, billets and blooms for sale to those who had formerly used wrought iron."

A. My general knowledge of the conditions which existed at that period.

Q. But that general knowledge did not enable you, did it, to mention the name of a single concern that went into the

National Steel, without looking at Swank's Directory?

A. It certainly did not; and it would be impossible for it to do so.

Q. And it did not enable you to give the products of a single one of these companies?

A. No, no; I am not a walking directory. I cannot do that.

Q. And it did not give you the ability to name the percentages of these products or where they sold them?

A. No.

MR. SEVERANCE: Just a moment, Mr. Roberts. I must object to this argument. Counsel has asked these same questions over and over again, and they have been answered frankly by Mr. Roberts, and I object, now, to a series of arguments in the form of questions.

By MR. DICKINSON:

Q. Can you name a single concern that went into the National Steel Company that, at the time it went into the National Steel Company, was selling billets and blooms to concerns that formerly used wrought iron? If so, state what concerns that formerly used wrought iron they sold to, respectively.

MR. SEVERANCE: I object to that as a repetition. The question has been answered repeatedly.

MR. DICKINSON: That question has never been asked.

MR. SEVERANCE: The first part of it has, and that involves the whole of it.

MR. DICKINSON: This is another part.

By MR. DICKINSON:

Q. Can you answer that, Mr. Roberts?

A. The Ohio Steel Company was selling billets and blooms to concerns which were previously manufacturers of wrought iron. As to the details of their individual customers and names, I have no knowledge at this time.

Q. You cannot give the name of a single concern to which it was selling?

A. I never had access to their books, no.

Q. And you cannot state, of your own knowledge, that they were selling to such concerns?

A. I know that they were selling to such concerns.

Q. Just tell us, then, what you know about it; who it was they sold to, and when and what.

A. No; I have no further details than that.

Q. You spoke of the American Steel & Wire Company. What did you mean; which American Steel & Wire Company?

A. In what connection did I speak of it?

Q. You spoke of the Tin Plate, Sheet Steel, Hoop and American Steel & Wire—that they were composed of certain concerns. Which American Steel & Wire Company were you talking about?

A. The American Steel & Wire Company of New Jersey.

Q. What concerns, at its formation, were taken over by or went under the control of the American Steel & Wire Company of New Jersey?

A. I am unable to give their names in detail. It is a matter of public record.

Q. Can you give any of them?

A. No, sir.

Q. At the time they were taken over, did you have any intimate knowledge of the financial condition of these several concerns?

A. None whatever.

Q. Do you know as to whether they were solvent or insolvent, or what the capital of each was, or what their financial ability was?

A. I never saw their books.

Q. Do you know individually what they were severally capitalized at?

A. A number of them were not incorporated companies. They were partnerships.

Q. Those that were incorporated, do you know what they were capitalized at?

A. Not from memory, no.

Q. Can you approximate it as to any of them?

A. No, sir.

Q. Those that were not incorporated and were partner-

ships, do you know what capital they severally had in their business?

A. I have no idea whatever.

Q. Can you approximate it?

A. Not in any manner or respect.

Q. Did you ever know?

A. That I do not know.

Q. Do you know what their standing was severally in the commercial world?

A. Some good, some bad and some indifferent.

Q. Do you know which were bad, can you name any of them?

A. No.

Q. Can you name any of those that were indifferent?

A. No.

Q. Speaking generally, were they large concerns or small concerns?

A. They were of varying sizes; for instance, the Washburn & Moen were a very large concern. There were a great number of very small ones.

Q. There were a great number of very small ones and you do not know anything about their financial condition, you have said?

A. I do not know of their financial condition in detail.

Q. Do you know anything about it, in detail or not?

A. No; any more than I said before, some were good, some were bad and some indifferent.

Q. And you cannot say which were good and which were bad?

A. No.

Q. How do you know some were bad and some good if you do not know the names?

A. Simply from the credit which they had in their business and the way they were looked upon by the trade in general.

Q. Were you in the wire and steel business?

A. No; I was not. I was a seller of billets to a certain extent.

Q. Can you name any of them at the time you sold billets

that went into that company that were short of capital and credit?

A. I could not in detail at this time, no.

Q. Which of those did you sell billets to?

A. Our billets in those days were largely sold through brokers, and we had no knowledge of their ultimate destination.

Q. So that you cannot say, then, to whom you sold, of those companies?

A. No, I could not individually name them.

Q. You say you sold through brokers; do you know to whom they sold?

A. I do not.

Q. Did you get your money through the brokers?

A. We did.

Q. You dealt with them?

A. We sold through brokers.

Q. You sold through the brokers and they sold to the other people?

A. Yes.

Q. Can you state the concerns, the several companies, that went into the Consolidated Steel Wire Company?

A. I cannot.

Q. Can you state what their respective capacities were?

A. I cannot.

Q. Or the products manufactured by each?

A. I cannot. It is all of record.

Q. Take the American Steel Hoop Company; can you give the names of the several companies that went into it at the time it was formed?

A. No.

Q. Can you give their respective capitals?

A. No.

Q. Capacity or product?

A. No.

Q. Or what products they made?

A. No, excepting in a general way it was various forms of hoops, bands, cotton ties and so forth. It was a class of

product peculiar to itself. Some of them made sheet steel, light sheets and skelp iron.

Q. Anything else?

A. And some few small bars. I will correct that by saying some bars and omitting the word few; I mean a small range of sizes.

Q. What was that?

A. Small bars.

Q. What concern was that?

A. Small bars as distinguished from heavy bars.

Q. Can you give any information, or have you any knowledge or information as to the financial standing or capitalization or credit or ability of any of those concerns that went into the American Steel Hoop Company when it was formed?

A. Not in detail.

Q. Can you give it at all, and if so, state what you can give.

A. My answer would be the same as I have always given in regard to those concerns entering into the other consolidations.

Q. Now, on page 9179 you testified as follows, as to tin plate. I think you afterwards made a correction, but I will read it as it appears here:

"The Tin Plate, the Sheet Steel, the Hoop, and the American Steel & Wire Company were composed of concerns who individually were neither able for want of capital, or amount of output to change from wrought iron or to manufacture steel in sufficient quantities to make it commercially profitable to do so."

Please state those concerns that went either into the Sheet Steel or the Tin Plate or the Hoop, or the American Steel & Wire, which at that time were individually neither able for want of capital or amount of output to change from wrought iron or to manufacture steel in sufficient quantities to make it commercially profitable to do so.

A. My statement is a general one, and like all general statements might be subject to one or two exceptions, but as a general statement it holds good.

Q. I will not deal with the exceptions, but I will deal with the whole number, and I will ask you to give the names of

those that answered to that description. State which ones they were.

A. The only answer I can give to that is that, taking a detailed list of those concerns which entered into those consolidations and examining their output as given by themselves in the directory of the Iron & Steel Association, you can then see which were unable, by reason of their size and output, to successfully manufacture steel from a commercial standpoint.

Q. Could you, without any statistics of that sort, give the financial condition or what the capital of those several concerns was?

A. The financial condition would not enter into the matter. Their output was of insufficient quantity to consume the product of a steel making establishment individually.

Q. Capital cut no figure, then?

A. In some cases it did and in some cases it may not have.

Q. Just state as to which of them capital did cut a figure with and as to which it did not?

A. I am unable to give you that in definite figures.

Q. Can you name a single concern that went into either one of those companies that was unable to command the capital to change from wrought iron or to manufacture steel in sufficient quantities to make it commercially profitable to do so?

A. As a general proposition, I would name all of them. There was, as I say, probably an exception here and there to that, but no concern whose output was insufficient to absorb the product of a steel making plant would have had sufficient capital to enter into the manufacture of steel.

Q. You cannot name a single one whose financial condition you knew?

A. Not any figures, no.

Q. Can you approximate it?

A. I cannot approximate it except by the statement that I say that any one of those concerns that had insufficient output to operate successfully a steel making plant would not have had sufficient capital at its command to have gone into a modern steel making proposition.

Q. Now, Mr. Roberts, you have stated here as a broad

proposition that the Sheet Steel, the Hoop, the American Steel & Wire, were composed of concerns who individually were neither able, for want of capital or amount of output, to change from wrought iron or to manufacture steel in sufficient quantities to make it commercially profitable to do so. You are asked now to name a single one with whose capital or financial condition you were acquainted and which was in the condition that you there describe.

A. You will note in the reading of it I did not say that those reasons applied to all. I said those were reasons.

Q. You said that the Tin Plate, the Sheet Steel, the Hoop and the American Steel & Wire were composed of concerns who individually, and you made no explanation.

A. Then read on.

Q. I will read. I have read it several times. "The Tin Plate, the Sheet Steel, the Hoop, the American Steel & Wire were composed of concerns who individually were neither able, for want of capital or amount of output, to change from wrought iron."

A. Or want of capital. It does not apply equally to all. That is an alternative proposition.

Q. You did not let me finish.

A. Excuse me. The word "or" was what I wanted to call your attention to.

Q. "To change from wrought iron or to manufacture steel in sufficient quantities to make it commercially profitable to do so."

Now, what do you say?

A. I say the word "or"—it is an alternative.

Q. Some of them could not do so for the want of capital?

A. Right.

Q. And some could not do it on account of the amount of output?

A. Right.

Q. Name those that could not do it for the want of capital.

A. No, sir.

Q. Can you do it?

A. I cannot do it.

Q. Name those that could not do it on account of the amount of output.

A. Not in detail, I cannot do it.

Q. And you cannot give us any further information?

A. I can give it to you in output by referring to individual concerns in the Iron and Steel Directory; not otherwise.

Q. Did you know when you made that statement what the output was?

A. I had gone over it and examined the output.

Q. Could you have stated the output when you made that statement of a single one of those concerns?

A. That statement was made as a result of my general knowledge and examination, checking up that general knowledge individually and in detail from the Directory of the American Iron and Steel Association. That was done about a year and a half ago.

Q. When you made that statement, Mr. Roberts, a day or two ago——

A. (Interposing) That statement was generally a conclusion which I arrived at from such examination.

Q. And was it based on your knowledge that you had yourself of affairs of any of these companies?

A. Yes, the general knowledge I had of these affairs at that period, about 1898.

Q. What do you mean by general knowledge?

A. I think that defines it pretty clearly, the term "general knowledge."

Q. I would like to hear you, because I want to ask you some questions about it.

A. Well, anyone who was in the iron and steel business as of that period, buying and selling, knowing markets, knowing the concerns that were operating, looking out at all times where he could add to his varied lines of products, had a general knowledge of the situation and of the developments which were taking place in that industry. As to whether he had a detailed knowledge of the dollars and cents invested in every concern or detail as to the exact tonnage of their output in tons, why, I say, no; no man living had such a comprehensive

knowledge as that. I distinguished detailed knowledge in that respect from general knowledge.

Q. Did you have any personal knowledge of the financial condition of a single one of these companies when you made this statement the other day? If so, state which company it was and what its financial condition was.

A. I say, generally, that a concern, from a general knowledge, would not be in a financial position to enter the steel business if its tonnage was such that it would not warrant it to operate a steel manufacturing plant.

Q. Now, you put it on tonnages, do you?

A. Tonnage is one consideration, yes.

Q. Now, can you give the tonnage of a single one of these concerns at the time it went in?

A. Now?

Q. Now, yes.

A. No, I cannot do that.

Q. You said tonnage was one consideration. What were the other considerations?

A. Financial ability.

Q. Financial ability?

A. Yes.

Q. And you cannot give either the tonnage or the financial ability of a single one of these concerns at the time they went in, can you?

A. Not in detail, nor never could.

Q. Can you give any information about it?

A. You can give hearsay; you can give from general knowledge, but if you are going into detail, you manifestly cannot get such knowledge as you are asking for without an examination of their books. I never examined any of their books; no, sir.

Q. Did you know what any of them owed?

A. Of course I did not.

Q. Did you know how much capital they had in the business?

A. I did not, in dollars and cents.

Q. Did you know anything about it, then?

A. Not that character of knowledge, no.

Q. But still you knew enough, did you, to say they did not have capital or output enough?

A. I do.

Q. But you cannot give any more detailed information than that?

A. Of that statement I am just as positive as I am that I am sitting in this chair.

Q. And are you as positive of your other testimony in this case as you are of that?

A. I believe I am quite positive of the correctness of my testimony so far, yes.

Q. Now, Mr. Roberts, how many of the concerns that went into the Sheet Steel Company or the Hoop Company or the American Steel & Wire Company had to change from wrought iron at or near the time at which those respective companies were formed?

A. None of them that I know. The change had already occurred and forced these concerns to purchase their semi-finished steel from which their finished product was formed in the open market; and it was this lack of control of their own raw material and the impossibility of making for each concern a commercially successful steel plant that forced these consolidations, and concerning which I have already testified.

Q. You say, then, at or about the time that the constituents of these several companies were taken over none of them were in a position where they had to change from wrought iron to the manufacture of steel?

A. None. The change had already been made.

Q. How long before they severally went into these several companies, respectively, had the change been made from wrought iron to manufacturing steel?

A. There had been a change continuing back probably as far as the year 1885 or 1886 or 1887. There was no one definite date when the change occurred, but it was a continuing change which had taken place over a number of years.

Q. Then, for wire companies, had it taken place as early as 1895?

A. The change from wrought iron to steel?

Q. Yes.

A. Oh, for wire longer than that. Wire is essentially a creature of steel. Iron wire played no such part in the industry as the wire business did after the introduction of steel. Steel made wire possible.

(Whereupon an adjournment was taken until to-morrow, June 6, 1913, at 10:30 o'clock a. m.)

SEVENTY-FIRST DAY.

EMPIRE BUILDING,
NEW YORK CITY,

FRIDAY, JUNE 6, 1913.

Before SPECIAL EXAMINER HENRY P. BROWN.

Present on behalf of the United States, MR. DICKINSON and MR. COLTON.

Present on behalf of the defendants, MR. SEVERANCE, MR. REED and MR. BOLLING.

PERCIVAL ROBERTS, JR.,

the witness under examination at the taking of adjournment, resumed the stand for further

CROSS-EXAMINATION (Continued),

By MR. DICKINSON:

Q. Mr. Roberts, what was the price of rails in November, 1898, when the rail pool was formed by Messrs. Gary, Frick and Carnegie?

MR. SEVERANCE: I object to that, as I do not recall the testimony furnishes any foundation for the question in the form in which it is stated; therefore I object to it.

A. I do not recall the price.

Q. How long after November, 1898, was it before the price of rails was advanced to $33?

A. I do not recall the exact time.

Q. Can you approximate it?

A. No, I could not.

Q. Do you remember that it was advanced to $33 as a fact?

A. I do recall that rails sold as high as $32 or $33.

Q. At what time?

A. In 1898 or 1899.

Q. How long did it continue at $32 or $33?

A. I do not recall.

Q. Do you know whether it was reduced to $26 after it reached $32 or $33, and if so at what time?

A. Rails did sell later at $26 a ton, but I cannot say now the exact date.

Q. Can you give the year?

A. I think rails were selling at $26 a ton at the time of the formation of the United States Steel Corporation; that would be in the spring of 1901.

Q. And how long had they been at $26 a ton?

A. I do not recall.

Q. How long did they remain at $26 after the formation of the Corporation?

A. I think a very short time; maybe one or two months.

Q. Do you know of any rails that ever sold, Standard Bessemer rails, as low as $26 after the formation of the Corporation; if so, state what your knowledge is on that subject?

A. I could give no specific contracts; no.

Q. Can you give any information on the subject?

A. No, other than that the price was $26, I think, for a month or two after the formation of the Steel Corporation.

Q. And after that, what did it become?

A. It became $28 a ton.

Q. Did it ever go back after that to $26?

A. No. They have continued at that price until the present day.

Q. You spoke of Mr. Cassatt, who was president of the Pennsylvania Railroad Company about the year 1900, inaugurating a system on the Pennsylvania Railroad Company of making his purchases yearly at about the end of each calendar year. What was the price at which Mr. Cassatt at the time you speak of purchased rails, what was the price at which he purchased rails?

A. I do not know.

Q. You spoke of making his purchases yearly from the time that he inaugurated that system which you say was about the year 1900. Was the price uniform at which he purchased all of his rails for the year 1900?

A. I cannot answer that question for that year.

Q. When did he make his purchases for the year 1901; what months did he make the contracts?

A. These details I am unable to give. I would call your attention to the fact that at that time I had no personal connection with the Pennsylvania Railroad as a director, and what I know of those early years prior to my directorship are simply such reports as I have had subsequently from the officers of the company.

Q. Then your testimony that you have given in regard to rails and prices and the system that prevailed at that time was not based upon your own knowledge acquired as of that time, but on information that you have received from others?

A. Some was. Some was naturally second hand.

Q. Now, then, please tell us what was first hand; for instance, in regard to Mr. Cassatt about the year 1900 inaugurating a system for the Pennsylvania Railroad, was that knowledge first-hand or second-hand?

A. That knowledge came directly to me from the records of the Pennsylvania Railroad Company since I have been a director.

Q. What records?

A. And especially since I have been the Chairman of the Supplies Committee of that company?

Q. When did you become Chairman of the Supplies Committee of that company?

A. About 1908.

Q. About 1908?

A. Yes.

Q. Did the knowledge that you acquired as Chairman of the Supplies Committee in 1908 give you any information as to what was done in 1900?

A. It did.

Q. How; just explain that, will you?

A. By having knowledge of the methods pursued in the letting of contracts for rails.

Q. Therefore, from the method that was pursued in 1908, when you were Chairman of the Supplies Committee, you are from that testifying, are you or not, as to the method that was pursued in 1900?

A. No; I am testifying to the method pursued in 1900 from the historical records which are preserved in the various departments of the Pennsylvania Railroad.

Q. You yourself had no knowledge at that time in the year 1900, did you?

A. Yes.

Q. What position did you hold then with the Pennsylvania Railroad Company?

A. I did not hold any.

Q. And had no connection with it as a director?

A. It was a matter of public notoriety at the time and was announced in the public press and in the trade journals.

Q. Then your information is based, is it, upon mere matters of public notoriety and knowledge you got from trade journals?

A. As of the year 1900, yes; confirmed later by positive knowledge since I have been a director of the Pennsylvania Railroad.

Q. What positive knowledge have you acquired since you have been a director of the Pennsylvania Railroad that confirmed anything as to facts that transpired in 1900? State exactly what it is.

A. Examination of their records.

Q. You are speaking, then, from records of the road?

A. I am.

Q. Not from any knowledge which you yourself had of the transactions when they took place?

A. Confirming the general knowledge which I had, disseminated through the public press.

Q. Well, then, all of the knowledge upon which you base that testimony is what you got from the public press and what you got from a subsequent examination of the records of the Pennsylvania Railroad as of that period?

A. And in conversation with the various officers who actually carried on the transactions.

Q. But did you have any other knowledge except what you got from conversation with these various officers, from the subsequent examination of the records of the Pennsylvania Railroad and such contemporaneous knowledge as you acquired through the public press?

A. I think that is complete knowledge regarding a transaction.

Q. That completes your knowledge, does it?

A. That is all my knowledge.

MR. DICKINSON: Then we object to the testimony that he gave upon that as being hearsay and incompetent, and the evidence based upon documents and records of the Pennsylvania Railroad we object to on the ground that such documents and records are themselves the best evidence and that Mr. Roberts' testimony from them is secondary testimony and incompetent.

THE WITNESS: And I think in addition to that I would also say that during the summer of 1901 or 1902, in a conversation I had with Mr. Cassatt, he discussed the subject of steel rails.

MR. DICKINSON: I object to your stating any conversation with Mr. Cassatt; I am not calling for it and I object to it as incompetent.

THE WITNESS: You asked for all my knowledge.

MR. SEVERANCE: You asked for knowledge, and he should be allowed to complete his answer.

MR. DICKINSON: I asked for his sources of knowledge.

THE WITNESS: I am giving as one of the sources Mr. A. J. Cassatt, president of the road.

MR. DICKINSON: I object to that answer.

MR. SEVERANCE: Finish your answer.

By MR. DICKINSON:

Q. You were not at that time connected with the corporation?

A. I was not at that time a director of the corporation. That is, the Pennsylvania Railroad, I was not connected with.

MR. SEVERANCE: Which corporation do you mean?

MR. DICKINSON: I mean the Pennsylvania Railroad.

THE WITNESS: No.

By MR. DICKINSON:

Q. What changes were made in the laws of the United States during 1900 which restricted, if there were such laws,

the opportunities that had existed prior to 1900 to bargain with the railroad for transportation, which was at no definite price?

A. I have not qualified as an expert in the law, sir. I really do not know.

Q. Can you state what governmental regulation changed the law in that respect as between the years subsequent to 1900 and the years prior thereto?

A. Concerning the law, I would not express any opinion.

Q. How about governmental regulations?

A. The scope and power of the Interstate Commerce Commission as about that time became much more far reaching than it was formerly or prior to that year, and I think it is a positive fact that since about that date the charges for transportation have not been subjected to any character of rebate whatsoever. They are entirely in the control of governmental regulation. The situation subsequent to the year 1900 is different from that prior to 1900. I speak generally, not wishing to name any definite month or any definite date.

Q. Do you mean by that that in 1900 and for a period prior thereto it was lawful under the laws of the United States for railroads to give rebates or to haul freight for people who were substantially in the same conditions at different rates?

A. I express no opinion as to its lawfulness or unlawfulness.

Q. What are you expressing an opinion about?

A. That the same was done.

Q. Are you expressing an opinion as to whether or not after 1900 the same was not done?

A. I think I am safe and correct in saying that it has not been done.

Q. Mr. Roberts, what process was used by the Standard Company in making or in attempts to make seamless tubes prior to the taking over of the Shelby Company by the National Tube, and under what patents were these processes? I am asking you now to answer as of your own knowledge.

A. The principal machinery and that in reference to which there was litigation between the Shelby and the Standard, was a method of piercing the blanks from which the seamless steel

tubes were produced. The validity of that patent was later determined in a suit between the Shelby Tube Company and a concern whose name I do not just recall, and the opinion given in favor of the Shelby about 1905, I think.

Q. You say that patent. Was the Standard operating only under one kind of patent in its plans or efforts to produce seamless tubes?

A. I cannot tell you the exact number of patents, but that was the vital patent of the process and the one which was in dispute between the Shelby and the Standard.

Q. Do you know the name of the patentee or the number of the patent?

A. There were two former employes of the company who had left the Shelby and had started the Standard, and I do not recall their names for the moment, but they had made these piercing machines which the Shelby claimed infringed their patent on the piercing machine, and the litigation was in regard to that. It was the foundation of the process. Since that time the machinery used by the Shelby prior to its acquisition has been established in all the plants of the National Tube making seamless tubes. It was a vital patent.

MR. DICKINSON: Will you read my question?

(The question was read by the stenographer, as follows:)

"Q. You say that patent. Was the Standard operating only under one kind of patent in its plans or efforts to produce seamless tubes?"

By MR. DICKINSON:

Q. Now, you have said a good deal. I do not think you have answered my question.

A. I said there might have been more.

Q. And I am trying to make your examination short, but I cannot do it unless you respond to my questions.

A. Read the question again and let me see if I can answer.

(The question was again repeated as above recorded.)

MR. SEVERANCE: In starting your question you say that patent and then follow it up with a question as to the Standard. You understand he has been testifying as to a patent owned by the Shelby and not by the Standard, which it was

claimed the Standard device infringed. You may have misunderstood him.

MR. DICKINSON: No.

MR. SEVERANCE: The patent was not the Standard patent. It was the Shelby patent.

MR. DICKINSON: Read the question.

(The question was again repeated as above recorded.)

THE WITNESS: The total number of patents I am unable to state. I have in mind the principal patent controlling the operations of making seamless pipe.

By MR. DICKINSON:

Q. Do you know whether or not the Standard Company was operating entirely in manufacturing or efforts to manufacture seamless tubes under what came within that patent, or whether they had or were attempting to use patents or processes which were different from that patent? Do you know anything about it yourself?

A. I know that the piercing machinery was absolutely essential to the success of the process, and that that piercing machinery was an infringement of the Shelby patents.

Q. Did you ever see the patent?

A. Yes, I glanced over the patent.

Q. You glanced over the patent when?

A. Lately.

Q. Where is it?

A. I cannot tell you where it is now.

Q. Will you produce it, please?

A. I will be glad to if I can find it, yes.

Q. Do you say that the Standard had no other patents, and were operating under no other patents than that?

A. No.

Q. You do not say that?

A. No, I say no other patents for the piercing machinery.

Q. But I want to know whether you mean to say that you know that they were not operating under any patents by which they were making or attempting to make seamless tubes other than the one which the Shelby was contesting?

A. They were operating under no other patent for that

portion of the process which is known as piercing blanks, and upon which the subsequent operations of making seamless tubes depended.

Q. Were you at their works before they were taken up?

A. I was not.

Q. Were you at their works before they were taken over by the National Tube?

A. I had never been in their works.

Q. Did you ever see their machinery?

A. I never saw their machinery.

Q. Never saw it operate?

A. Never saw it operate.

Q. You don't know what kind of machinery they had?

A. I do not.

Q. Do you know of your own knowledge, Mr. Roberts, that the National Tube Company did not have a process for manufacturing seamless tubes other than the process that was used by the Shelby Tube Company?

A. I know only what was reported to the executive committee of the board of directors of the United States Steel Corporation at the time of the purchase of the Shelby Tube Company by the president of the United States Steel Corporation.

Q. Is that all you know about it?

A. That is all I know about it.

MR. DICKINSON: Then we object to your testimony as the report is the best evidence and this is secondary, and his statements heretofore made in regard to these conflicts are based on hearsay.

THE WITNESS: I would also refer to the decisions of the courts in regard to the Shelby patent.

MR. SEVERANCE: We will take judicial notice of that. We do not need to refer to them.

MR. DICKINSON: Mr. Roberts is quite an authority, not only upon the law, but even upon legal ethics.

THE WITNESS: I disclaim being an authority upon the law.

By MR. DICKINSON:

Q. Now, Mr. Roberts, after the Shelby Company was taken

over, what changes, if any, were made in the machinery of the Standard Company for making seamless tubes?

A. I cannot give you that information, sir; I left the corporation soon after the Shelby Tube Company was taken over.

Q. After the Shelby was taken over, or at any time prior thereto, did you have any personal knowledge of the machinery that had been used by the Standard Company under the National Tube?

A. Only such reports as came to the executive committee of the board of directors of the Steel Corporation.

Q. Mr. Roberts, don't you know that with some slight changes and adaptations that the machinery used by the Standard or under the Standard process was continued to be used by the National in making tubes substantially like the Shelby had been making them?

A. I understand that it was necessary for the National Tube to use the piercing machine for its work controlled by the Shelby patent, and that that is the fact today.

Q. But what did they do, what did the National Tube do with the machinery that it was using at that time when it took over—that it had been using when it took over the Shelby? I am asking you if you know of your own knowledge.

A. It probably continued to use it, as far as I know.

Q. They continued to use it, so far as you know?

A. They did, and they, in taking over the Shelby Tube, relieved themselves of the litigation which they had assumed in the purchase of the Standard Tube.

Q. How long, as far as you know, did they continue to use the machinery that had been used before they took over the Shelby? I mean the machinery of the Standard?

A. I think they are still using it, except this one machine which is known as the piercing machine, which is controlled by the Shelby patent.

Q. That is one machine among a number; if the patent inhibition was removed, do you know whether or not after that difficulty was taken away whether they continued to use that machinery?

A. No, they used the Shelby, the machinery covered by the Shelby patent, which was then in litigation.

Q. Was the other machinery like it if it was in conflict with the patent?

A. The other machinery had performed different steps in the process, and this was simply a machine with which they pierced the blanks in which the tubes were made.

Q. Did I understand you to say the contest was as to whether or not the National Tube in using that piercing machinery was conflicting with the Shelby patent?

A. That is right.

Q. I am asking you after that controversy was removed by litigation whether then they continued to use this machinery in the Standard or not?

A. No, they built machinery under the Shelby patent and introduced it into all their seamless works.

Q. Now, do you know of your own knowledge that they did not use——

A. (interposing) Only what is reported to me.

Q. Only what is reported to you?

A. That is all, sir.

Q. I am asking you if you know of your own knowledge whether or not——

A. (interposing) Only by report.

Q. (continuing) Whether or not the machinery that had been used by the Standard for making tubes, and especially that part which has been made for piercing tubes was, after this difficulty or litigation was removed, continued to be used or not. Do you know anything about that?

A. The machinery used after the acquirement of the Shelby Tube Company, so far as the piercing of blanks was concerned, was changed to the machinery covered by the Shelby patent.

Q. Then the machines were different, were they?

A. The piercing machinery in one of the works was different. Of course, that machinery which was used by the Standard, bear in mind the National Tube before the acquirement of the Standard was also attempting to make seamless tubes. Now, the piercing machine——

Q. (interposing) Was that under the patent that was in conflict with the Shelby patent?

A. I do not so understand. These two men who had left the Shelby and started the Standard built a piercing machine which the Shelby claimed infringed their piercing machine and there was litigation existing between the Shelby and the Standard at the time of the acquirement of the Standard by the National Tube. The National Tube assumed that litigation and it was pending.

Q. Now, you have told us that pretty often; how long had it been pending?

A. I could not tell you the date of the suit, except it was before the date of the acquirement by the National Tube.

Q. You have stated that the National Tube, before it acquired the Standard, was trying to make seamless tubes and were not commercially successful. Were you ever at their works?

A. I never was.

Q. Have you any personal knowledge of it?

A. I am giving you reports that came to me as a member of the executive committee of the United States Steel Corporation.

Q. That was before they acquired the Standard.

A. After they acquired the Standard.

Q. These reports came after they acquired the Standard?

A. After they acquired the Standard.

MR. DICKINSON: Then I object to his testimony regarding these reports, the reports being the best evidence, as secondary evidence.

THE WITNESS: The reports were verbal and not in writing.

By MR. DICKINSON:

Q. Don't you know that at the time the Standard was acquired the National Tube Company was making seamless tubes and regarded the Standard as a competitor and the Shelby as a competitor, in seamless tubes?

A. Undoubtedly to a greater or less extent. The percentage of seamless tubes being made by the National Tube Company at the time of its acquirement of the Standard, was an extremely small percentage, and was in an experimental stage.

Q. It was making lap-welded tubes, wasn't it?

A. It was, and that had always been its business.

Q. To a very large extent?

A. Lap and butt-welded pipe was its entire business.

Q. Not its entire business, was it?

A. Except this small percentage of seamless tubes which I spoke of.

Q. What percentage of its business at the time it took over the Standard was in seamless tubes?

A. So small that it would not be appreciable.

Q. At the time it took over the Shelby, what portion of its output was seamless tubes?

A. I cannot give the exact figure, but it was considerably larger than it was at the time it took over the Standard.

Q. The lap-welded tubes were in competition, were they not, with the seamless tubes?

A. No.

Q. Do you mean to say that they did not serve the same purposes at all?

A. They are not in competition; never were and never have been.

Q. Do you mean to say that some people who were in the market to buy tubes for their purposes did not consider the relative price of the two and determine which they would take, and that they served the same general purpose?

A. No, they never did.

MR. SEVERANCE: That is a double question; did you answer both parts of it? You say they never served the same purpose?

THE WITNESS: I say they do not serve the same purpose. Of course, you can substitute at any time a lap-welded tube with a seamless tube, but you cannot use for many purposes a lap-welded tube for which a seamless tube is used. Seamless tubes were principally used and are used for very high pressures, pressures that are too high, hydraulic pressures that are too high for a lap-welded tube to withstand. A seamless tube is a more expensive tube to make, and as I say, can be substituted for any purpose that a lap-welded tube can be used for, but *vice versa* does not hold good.

Q. At the time the Shelby Tube Company was taken over by the National Tube Company, state for what purposes lap-welded tubes were used?

A. For all purposes for which tubes were used, or pipes were used, of the sizes that were made of lap-welded tubes, for withstanding pressures which were not too high for their resisting capacity.

Q. Particularize, just exactly what do you mean?

A. Steam, water, gas and air.

Q. Were seamless tubes used at that time for steam, water, gas and air?

A. No, only when pressures became so high that a lap-welded tube had not sufficient resistance to withstand it.

Q. Do you mean to say seamless tubes were not sold at that time at all in the market except for demand to resist pressure that lap-welded tubes would not resist?

A. Excepting for one purpose, and that was for locomotive and stationary boiler tubes.

Q. You say they were both used for that purpose?

A. They were both used for that purpose.

Q. Then they were in competition for that purpose?

A. To a certain extent, yes.

Q. To the extent to which people might buy one or the other and look to the question of price, were they not?

A. Yes; a customer had his option whether he would use a seamless tube or a lap-welded tube.

Q. When you said a while ago that they were not competitors at all what did you mean, when you now say that they did compete for that purpose?

A. I said that a seamless tube could be used wherever a lap-welded tube was used, but I said there were a great many purposes where lap-welded tubes could not be used where a seamless tube could.

Q. Didn't some people who could use either buy one or the other, according to their preference, and according to the question of price?

A. That is what I have said could be done at any time.

Q. In that sense, then, they were competitors, were they?

A. As I said before, the seamless tube could be used for

any purpose that the lap-welded was used for, but that the lap-welded could not be used for all purposes that a seamless tube could be used for.

Q. To the extent, then, to which you have defined that, they were competitors, were they?

A. One had universal use; the other had limited use.

Q. To the extent, then, that a lap-welded tube could be used for the same purpose that a seamless tube could be used for, they were competitors, were they not?

MR. SEVERANCE: Just a moment; I object to that as a mere conclusion. He has stated the fact. The Court will draw conclusions from that as to whether they are competitors or not.

MR. DICKINSON: I would like to have him answer that.

MR. COLTON: He has been put forth as an expert on the subject.

THE WITNESS: Competitors in use, but not competitors in price.

By MR. DICKINSON:

Q. Do you state positively that they were not competitors in price; do you know that of your own knowledge?

A. Yes, unless a person disregarded the higher range of values for one than the other.

Q. Who was Mr. E. C. Converse in the year 1900?

A. Mr. E. C. Converse.

Q. I know, but I mean what position did he hold?

A. I think he was president——

Q. Some people change their names. I did not mean, however, that he had. Was he not president of the National Tube Company?

A. He was the president of the National Tube Company; whether as of that year or not, I do not recall.

Q. Was he experienced and versed in the tube business?

A. Yes, I think so.

Q. Had he been engaged in the control of concerns manufacturing tubes?

A. Yes.

Q. He was then at the head of the largest tube concern in the United States, was he not?

A. When he was president of the National Tube Company he was, yes.

Q. Did he not continue that for some time? How long?

A. He was president of the National Tube Company at the time of the formation of the United States Steel Corporation.

Q. Did he not become a director of the United States Steel Corporation then?

A. He did.

Q. Was he not a man of very large experience and knowledge in the matter of the manufacture and sale of tubes?

A. I should rather he would testify as to that himself. I had no personal acquaintance with Mr. Converse before he was a member of the executive committee of the United States Steel Corporation.

Q. You had no experience in the making of tubes?

A. I had not.

Q. Nor in the sale of tubes?

A. I had not.

Q. Nor in the market condition of tubes, had you?

A. I was a purchaser of tubes, yes.

Q. At what time?

A. During my connection with the Pencoyd Iron Works.

Q. For what purpose?

A. The various purposes of those works.

Q. Just state what they were.

A. The multitude of uses that pipe could be put to in a steel manufacturing plant; steam, water and gas.

Q. What kind did you use?

A. Lap-welded pipe, and in hydraulic machinery some seamless.

Q. Some seamless?

A. Yes.

Q. You used both?

A. Yes.

MR. SEVERANCE: Wait; let us see. Did he say both?

By MR. DICKINSON:

Q. Did you say both.

A. I said some seamless for hydraulic purposes, where the pressures were too high for welded.

Q. Then I said both. You said you used both?

A. Yes, we used both. The seamless was a new introduction; I had used seamless only for a very few years.

Q. I call your attention to the meeting of directors of the National Tube Company, October 16, 1900, Volume II, page 405 of Government Exhibits. The president—that was Mr. Converse at that time, was it not?

A. I do not know.

MR. SEVERANCE: I object to this as improper cross-examination of the witness for the reason that the witness was not present at the meeting, was not an official of the National Tube Company, and that this meeting is of a date prior to the organization of the United States Steel Corporation, and therefore any proceedings held at that meeting cannot be used on the cross-examination of this witness.

By MR. DICKINSON:

Q. I will read, Mr. Roberts. The record shows that Mr. Converse was there on this occasion, October 16, 1900:

"The President reported * * *

"That the Board has authorized the officers to continue their development of the Seamless Tube business at the Christy Park Plant of this company; that the officers have given very close study to the state of the art covered by the piercing and rolling processes which form the basis of the manufacture of seamless tubes; that at present the great bulk of seamless tubes are made by the Shelby Tube Company; that the other chief competitor of this company is the Standard Seamless Tube Company; that the exploiting of seamless tubes in competition with our lap-welded products at a parity of prices and the universal adoption of this style of tubes for modern purposes has convinced the officers of the advisability of still greater activity on our part to place ourselves in a position to meet the growing demands of seamless tubes for marine, locomotive and merchant purposes, as well as to enable us to use seamless tube products as a defensive method in protection of our lapped welded products; that the development and com-

pletion of our present Christy Park plant will probably involve an outlay of $250,000, and will consume two years' time to bring it to a profitable capacity; that the executive officers deem it advisable for this company to keep in the forefront of progress and to command this branch of business at the earliest state of its development, and governed by these considerations the Executive Officers have tentatively negotiated for the acquisition of the Standard Seamless Tube Company with its patents and plant, and with the services of the two gentlemen whose inventions and commercial ability are the present basis of its establishment, if such purchase can be made upon satisfactory terms and after investigation; that this subject requires immediate authorization by the Board if the Board deem it preferable to acquire the Standard Plant than simply to increase its Christy Park Plant during the period of two years; that the time saved in the acquisition of the Standard Plant, as well as the advantages of a modern and well equipped plant to be immediately employed are very great."

Now, do you know under what patents they were operating at their Christy Park Plant at that time of your own knowledge?

A. I do not.

Q. Were you ever there?

A. I never was there.

Q. Never saw their machinery?

A. Never saw their machinery.

Q. Do you know what at that time seamless tubes of the same sizes as lap-welded tubes were being sold at in comparison with lap-welded tubes? Can you give the prices?

A. Not in detail. They were a much higher range than the lap-welded pipe.

Q. What do you understand parity of prices to mean?

A. At the time you refer to as of about the year 1900 there was a great deal of discussion going on among engineers as to——

Q. Now, Mr. Roberts——

MR. SEVERANCE: I object to the witness being interrupted when he is just starting to answer. You cannot tell whether

his answer is going to be responsive or not from what he has already said. I suggest that he be permitted to answer and if it is not responsive you can move to strike it out.

MR. DICKINSON: I will wait a while and see.

MR. SEVERANCE: That is what I suggest.

By MR. DICKINSON:

Q. Go on, Mr. Roberts.

(The question was then read as above recorded.)

THE WITNESS: Cross that out. An equal range of price; interchangeable prices, I would understand by a parity of prices.

Q. Now, what do you understand by "exploiting of seamless tubes in competition with our lap-welded products at a parity of prices" to mean?

MR. SEVERANCE: I object to that as asking for a conclusion and asking for an opinion on a question which is not a subject of expert testimony, and as not proper cross-examination and irrelevant.

MR. DICKINSON: He has given so many opinions I thought I would take another one.

THE WITNESS: Now I will have to reply to that by what I started to reply before. As of about the year 1900 a considerable amount of discussion took place among engineers as to the possibility of using steel pipe, welded pipe, as a substitute for pipe made of wrought iron.

In the early days of steel pipe a great deal of difficulty was experienced in proper welding, so that a large number of consumers refused to accept steel pipe and distinctly specified that their requirements must be filled with wrought iron. The makers of welded steel pipe, of which the National Tube was the largest, were considerably exercised over this question and were seeking if possible to develop a seamless tube as a substitute for a steel welded tube, and one which could be sold at the same price as their welded goods were at that time.

By MR. DICKINSON:

Q. Is that the only answer you can give to my question? I will repeat the question: What do you understand this to

mean: The "exploiting of seamless tubes in competition with our lap-welded products at a parity of prices."

MR. SEVERANCE: I make the same objection to that that I did to the other. This is not a question for expert testimony. Mr. Roberts is not an expert on Mr. Converse's language, and it is incompetent, not cross examination.

THE WITNESS: I think my answer is responsive to that question.

By MR. DICKINSON:

Q. Mr. Roberts, do you mean to say that the seamless tubes were not being exploited at that time in competition with lap-welded products at a parity of prices, or do you know of your own knowledge that they were?

A. I do not think they were.

Q. What?

A. They were not.

Q. And you cannot give prices?

A. I cannot give prices.

Q. Of either?

A. Of either.

Q. For any size?

A. For any size.

Q. When you make that statement, what do you base it on?

MR. SEVERANCE: Which statement; that he cannot tell prices?

MR. DICKINSON: The statement that they were not in competition at a parity of prices.

THE WITNESS: What is the question?

By MR. DICKINSON:

Q. That they were being exploited in competition in 1900 with lap-welded products at a parity of prices.

A. I say they were not.

Q. When you say that and are not able to give the price of either one at that time, on what do you base your statement?

A. Memory.

Q. Memory?

A. Yes, memory.

Q. Memory of what?

A. Memory of that fact.

Q. Just the fact, without any knowledge whatever as to prices?

A. As far as details of prices are concerned, my memory is not good enough to carry them for that length of time.

Q. Can you give any approximation of them?

A. No.

Q. Mr. Roberts, on page 9257 of your testimony you said—probably I had better read the question and the answer, so you will understand it.

"Q. Mr. Roberts, during the time that you have been connected with the Steel Corporation as a director, or as a member of the finance committee, or as a member of the executive committee, will you state whether in favoring the purchase or acquisition of any properties of any description at any time you have done so for the purpose of procuring a monopoly or eliminating competition or restraining trade?

"A. Never with any one of those views in mind, but strictly from the standpoint of their necessity for the operations of the Steel Corporation as originally planned along the lines of conservation or efficiency in shop management."

What plan do you refer to where you speak of "originally planned;" a plan formed when and by whom, and what did it involve? Just explain that original plan.

A. Are you speaking now of prior to the formation of the Steel Corporation or afterwards?

Q. I do not know what you mean. You said "for the operations of the Steel Corporation as originally planned." Now, I want to know what you mean when you speak of "originally planned."

A. The plan as discussed and attempted to be carried out by the executive committee of the board of directors of the Steel Corporation.

Q. You were referring, then, to plans formulated subsequent to the formation of the Corporation?

A. So far as I was concerned, yes.

Q. I mean so far as that answer is concerned.

A. Yes, and so far as that answer was concerned.

Q. What was the capacity of the Carnegie Company in Bessemer Steel in the year 1900?

A. I cannot give that exact figure?

Q. State what you know about it?

A. In the neighborhood of probably a million tons of ingots, 750,000 or a million.

Q. You have testified, however, about the output of the Carnegie and the Illinois?

A. Yes.

Q. Did you base that testimony upon knowledge you acquired as of the time, or hearsay?

A. I testified to that——

MR. SEVERANCE: I object to that as calling for a legal conclusion.

MR. DICKINSON: I did that for short. I am trying to get along, to accommodate you. I can elaborate, however.

THE WITNESS: I acquired that knowledge from the report as to the production of the Carnegie Steel Works as of the year 1900.

By MR DICKINSON:

Q. In the year 1900, about that?

A. No.

Q. When did you acquire it; that is what I want to get at?

A. Since I have been a director of the Steel Corporation.

Q. How long since

A. Since this time?

Q. Yes; when did you first acquire that information?

A. A few weeks ago.

Q. A few weeks ago?

A. Yes.

Q. How did you acquire it?

A. By looking at the report of the production of the Carnegie Steel Works and the Illinois Steel Company for the year 1900.

Q. And the information you acquired was that in the year 1900 it produced approximately a million tons of Bessemer?

A. Something like that, I should say; a million and a

quarter tons of open hearth, something of that kind; those would be about the figures, I think.

Q. What was the capacity of the Carnegie in the year 1900 in Bessemer steel ingots?

A. I don't know.

Q. Haven't you any idea what it was?

A. I have not.

Q. Can you approximate it at all?

A. By reference to the Iron & Steel Directory of the United States I can give the ingot capacity.

Q. That is the only way?

A. That is the only way at this time.

Q. Do you know anything about it yourself, independent of what you have picked up from statistics to prepare yourself to testify in this case?

MR. SEVERANCE: I object to that as an improper question.

THE WITNESS: As of that date, no.

By MR. DICKINSON:

Q. As of what date did you know?

A. I probably had a very close approximation for the year 1900 as to their capacity as well as what their output was.

Q. But you cannot remember now?

A. I would not undertake to at this late date.

Q. All the information and knowledge you can give now is based upon statistics you have been reading up lately in preparing the testimony in this case, is it not?

A. No.

Q. Then when did you get it and where did you get it?

A. That portion of my testimony in which I have not referred to detailed data, and the name of the place where I obtained it from, I have given you from memory.

Q. I am referring to the testimony you gave about the output, on this particular subject that we are now referring to.

A. The testimony I gave as to that output, I have just testified I gave from a report showing the output of the Carnegie Steel Company for the year 1900.

Q. And you have no other knowledge on the subject except

that? If so, state what knowledge you have, independent of it.

A. From memory I have no knowledge at this date.

Q. And without that statistical information acquired recently you cannot give any figures?

A. Not from memory at this time I cannot.

Q. Is that the same in regard to the statement with respect to the Illinois and its output?

A. The same applies to the Illinois, yes.

Q. And the National Steel?

MR. SEVERANCE: Did he give any statistics as to National Steel?

MR. COLTON: He gave statistics, yes.

MR. SEVERANCE: Did he; I did not hear that.

MR. COLTON: Not exact.

MR. DICKINSON: The testimony given by Mr. Roberts as to the output of these various companies is objected to because it has been shown to have been based entirely upon hearsay, and the witness has no independent knowledge on the subject.

By MR. DICKINSON:

Q. Did you answer that question?

A. What was the question?

Q. The question was have you any knowledge as to the output or capacity of the National Steel at any time prior to its going into the Corporation, other than such information as you may have obtained by a recent study of the statistics?

MR. SEVERANCE: I object to that as not proper cross examination. There was nothing of that kind gone into with the witness on direct examination.

MR. DICKINSON: About the National Steel?

MR. SEVERANCE: No sir.

MR. DICKINSON: I am not so cock-sure about it.

By MR. DICKINSON:

Q. Have you any knowledge?

MR. SEVERANCE: I object to that as not a proper question; there is no foundation for the question.

By Mr. Dickinson:

Q. I will put it this way. Can you give any information from your own knowledge as to the capacity of the National Steel Company with respect of its various products at any time prior to its being taken over by the Corporation, other than such information, as you may have acquired, if you have acquired such information from recent study of statistics?

A. No, absolutely not.

Q. What percentage in 1900 of the output of the Carnegie Steel Company in Bessemer Steel went into steel rails and what percentage went into billets?

A. I really do not know.

Q. I will ask you the same question as to the Illinois Steel Company.

A. I cannot answer.

Q. Can you give any approximation as to either?

A. I cannot.

Q. In 1900 was the Illinois Steel operating its open hearth furnaces to their full capacity?

A. In 1900?

Q. Yes.

A. Capacity is a theoretical point never reached in practice.

Q. Were they running their ability to produce open hearth steel for all it was worth?

A. I should say, I think so in the year 1900.

Q. Do you know anything about it?

A. Not from actual figures, no, but the general conditions of the trade were such that those works would be running full in the year 1900.

Q. Is that what you base your answer on?

A. Yes.

Q. Only from general conditions of trade?

A. Yes.

Q. And not from any intimate or personal knowledge of their operations?

A. I was not in their works in 1900.

Q. I will ask you the same question as to their Bessemer plant?

A. The same reply.

Q. That is to say, based upon your knowledge of the general conditions would you say they were running to full capacity?

A. That is correct.

Q. How long did that continue, the running of those concerns, according to your information based upon the sources you have given, how long did that continue?

A. I cannot answer that question.

Q. You know of the conditions for the year 1900?

A. I do.

Q. Well, what were the conditions in 1900, was there a demand or overproduction?

A. They were good until the close; there was a declining market toward the close of 1900.

Q. Was there a decline in production then, or did the decline in production follow later?

A. The decline in price would precede the decline in production.

Q. Sometime, would it not?

A. It would depend upon actual circumstances.

Q. Can you state how it did at that time?

A. I cannot, no.

Q. Going back to the Illinois Steel, what was their production at that time in sheared plates?

A. About 80,000 tons.

Q. Of sheared plates?

A. Yes.

Q. What was the output of the Illinois Steel Company of open-hearth steel?

A. About 180,000 tons of ingots, I think. I testified to that yesterday, I think.

Q. How many tons of sheared plates would 180,000 tons of ingots make?

A. About twenty per cent. less than the weight of the ingots.

Q. Twenty per cent. less?

A. Probably thirty per cent.

Q. Now, as I understand you, the output of the Illinois Steel Company in 1900 in sheared plates was 80,000 tons?

A. In round figures; I am not positive.

Q. And its open-hearth steel was 190,000 tons?

A. That is correct; ingots.

Q. Yes, of ingots. And that 190,000 tons of ingots would make——

A. Twenty to thirty per cent. less.

Q. That would be between 140,000 and 150,000 tons of sheared plates, would it not, if all of it was put in sheared plates?

A. Yes; about 130,000.

Q. Now, in your direct examination, on page 9270 of the typewritten testimony, you said "the open-hearth output of the Illinois Steel Company was used practically entirely in sheared plates." Where did you get that information?

A. From the Illinois Steel Company. I know of my own knowledge their open-hearth plant adjoined their plate mill and supplied their plate mill with its product. At times, if there was a surplus it went into miscellaneous material. It may have gone into billets or slabs; but the plant, as a plant, was an open-hearth plant, and attached to it, a sheared plate mill. I have been in that plate mill.

Q. And you said that practically it was entirely used in sheared plates?

A. I think that is a correct statement as a general statement, yes.

Q. But in 1900 it only produced 80,000 tons of sheared plates?

A. That is right.

Q. When, if all the steel ingots, open-hearth, had gone into sheared plates, it would have been over 140,000 tons?

A. It might be they had not sufficient orders that year to put the entire output into sheared plates.

Q. Then when you stated it was used practically entirely for sheared plates you were speaking of your own knowledge of what actually existed?

A. Yes; that is a correct statement.

Q. It is a correct statement?

A. Yes.

Q. Notwithstanding your other statement?

A. Which other statement?

Q. You have stated that for that year they put out 80,000 tons of sheared plates, and that they made 190,000 tons of ingots?

A. That is right.

Q. Which would have produced between 140,000 and 150,000 tons of sheared plates.

A. That is right.

Q. Both of them are right, are they?

A. Both of them are right. One confirms the other.

Q. Well, what did you mean by the words "practically entirely"?

A. In what connection?

Q. In that connection there; the open-hearth output of the Illinois Steel Company was used practically entirely in sheared plates.

A. Any steel producing plant considered as a whole is never perfectly balanced. A man builds a sheared plate mill and a number of open hearth furnaces. Never will the product of the mill balance evenly the product of the furnace, depending upon the nature of the specifications for his finished material, which may be light or heavy. Therefore he makes a certain amount of by-product from time to time and must dispose of the product of his steel melting furnaces in other ways, if his finished material will not consume it. Therefore, speaking from the standpoint of a steel manufacturer, it is perfectly correct to say that his output practically all went into sheared plates, whereas at times it might be disposed of as a by-product. But if you take it over a period of time, possibly longer than a year, you will find that practically the output of those open hearth furnaces went to his sheared plate mill.

Q. Well, now, do you know what was the product of the Illinois Company in open hearth ingots in the year 1899?

A. I do not.

Q. Do you know how much of that product that year went into sheared plates?

A. I know nothing about the product for 1899. I have seen no figures.

Q. What years, then, were you referring to when you said the open hearth output of the Illinois Steel Company was used practically entirely in sheared plates?

A. The year 1900.

Q. And for that year you show that not much more than one-half of it went in, don't you?

A. No, more than one-half.

Q. More than one-half?

A. Well, they produced 190,000 tons of ingots, and they produced—yes, just about one-half that year. The product of plates in tons was one-half the product of ingots produced, but bear in mind there is a waste there of twenty or thirty per cent.

Q. Yes; we allowed for that, I think.

A. I do not think you did.

Q. We took thirty per cent. and made it between 140,000 and 150,000.

A. But not in the last statement in which you said to me the production of their open hearth steel was twice as great as the product.

Q. No, I did not say twice; I said nearly.

A. I say that is not correct, because you do not make your allowance of your twenty to thirty per cent. waste.

Q. Let us make that allowance.

A. Then it is over one-half.

Q. How much over one-half?

A. If you take off your waste, you have got about 60,000 tons that comes off there; 150,000 as against 80,000. More than one-half.

Q. What percentage did you take off, twenty or thirty, or twenty-five?

A. I took off about twenty-five.

Q. You say you took off twenty-five per cent?

A. I took off twenty-five per cent; that would be roughly 50,000 off; that makes 140,000 and 80,000.

Q. It would be 47,500 off, wouldn't it?

A. Roughly that. It is easier to figure in round numbers.

Q. So that would make the amount of sheared plates that could be produced 142,500 tons?

A. Roughly that.

Q. And you say they only produced 80,000?

A. Yes.

Q. That is the only year you give any figures for?

A. The only year, yes.

Q. And that year the result is as shown, is it?

A. It speaks for itself.

Q. What do you mean by open hearth output of the Illinois Steel Company in the year 1900?

A. Ingots.

Q. Is there any difference in them?

A. In what?

Q. In the ingots that come under the head of "open hearth?"

A. In what way; different sizes of ingots?

Q. Different sizes.

A. Yes, the ingot is the weight of the fluid steel which is poured into the moulds from the melting furnace.

Q. Now, you say, when you refer there to open hearth output of the Illinois Steel Company, you refer to ingots and to all classes of open hearth ingots; is that what you say?

A. Yes; I say open-hearth ingots.

Q. I call your attention to Government Exhibits, Volume IV, page 1443, furnished by the United States Corporation for the year 1900 for the Illinois Steel Company, there were produced, open-hearth ingots, acid, 18,820; open-hearth ingots, basic, 175,000; total ingots, 193,848.

A. That is the figure I gave.

Q. Which one?

A. The one you just read.

Q. So the total, then, was 193,848?

A. You say so; I have not the figures, beyond what I gave, about 190,000 tons.

Q. I believe I asked you about percentage, but now I will ask you what proportion of the Bessemer output of the Carnegie Company and the Illinois Steel Company, respectively, went into steel rails and what proportion went into billets.

A. I have no figures in my mind in regard to those percentages.

Q. Have you any knowledge in your mind?

A. No memory, no.

Q. Which you can give me?

A. No memory at all.

Q. You stated on page 9271, "The competition existing at that time between these concerns"—that was the Carnegie and the Illinois—"was confined to their Bessemer output, which largely or almost exclusively went into steel rails and some billets for purposes such as wire, sheets and so forth." When you gave that testimony did you base it on your own knowledge?

A. I know that their output of Bessemer steel went into those various articles.

Q. I did not finish. Did you base it upon your own knowledge, or information which you had derived from the examination of statistics?

A. No, I am very clear on that. I was competing with the Carnegie Steel Company at that time and knew very well what their steel was going into. I answer of my own knowledge.

Q. Your answer is, then, that at that time, in the year 1900, based upon your own knowledge that the Bessemer output of the Carnegie Steel Company went almost exclusively into steel rails and some billets for purposes such as wire, sheets and so forth? Is that what you state now as of your own knowledge?

A. Yes. I might add that probably a portion of those billets were afterwards re-rolled into small sizes of merchant bar by the Carnegie Steel Company and by the Illinois Steel Company.

Q. Do you mean to say because you used the expression "the competition existing between these concerns was confined to their Bessemer output," do you mean to say of your own knowledge the Bessemer output of the Illinois Steel in the year 1900 went largely or almost exclusively into steel rails and some billets for purposes such as wire, sheets and so forth?

A. I think I am correct in saying that, yes. Bear in mind that that is the stopping point. I do not give the ultimate destination of those billets.

Q. No, you did not give that.

A. Some of the Illinois, those billets undoubtedly went into wire rod, but as a proposition at the stage of manufacture which I have been describing it went either into rails or into billets, slabs, or tin plate bars.

Q. Now, Mr. Roberts, at the time it was taken over by the Steel Corporation, and for the several years immediately preceding that, where did the Carnegie Steel Company sell the bulk of its billets?

A. In the Pittsburgh district, and extending out through Ohio, Indiana, through the East.

Q. And where did the Illinois Steel Company during the same period sell the bulk of its billets, so far as it sold any?

A. Largely in territory rather more adjacent to Chicago, but at the same time overlapping into what might be termed a common territory between Pittsburgh and Chicago.

Q. That is, territory common to both of those companies?

A. Yes.

Q. Do you know the periods at which they were both in the billet pool? and if so, state the time.

A. I know nothing about a billet pool; never knew there was one.

Q. Have you had any personal experience or knowledge of the organization or working or effects of any pool other than the beam pool, and if so, what pools have you had such knowledge and experience of, and the time of their existence and how they worked, and what were their effects on prices?

A. I think that I stated yesterday that the only pool that I had ever personally been a member of was the beam or structural material pool.

MR. SEVERANCE: That includes beams?

THE WITNESS: Beams, angles and channels.

By MR. DICKINSON:

Q. It was usually called the beam pool, wasn't it?

A. No, I think it was the Structural Makers' Association, to be quite correct.

Q. Is that the only one that you personally operated under or in connection with?

A. That I was a member of, yes.

Q. Did you have any intimate knowledge of the operations of other pools?

A. Nothing but the knowledge that was common to the trade.

Q. Common to the trade?

A. Yes.

Q. Did you have any knowledge as to other pools, as to the fixing of prices, if they did fix prices, and over what periods of time such prices prevailed, if they did prevail?

A. No personal knowledge, no.

Q. And you know nothing except what you say was given out and known in a public way?

A. I think prior to the year 1900, in the class of material which I have been speaking of the Structural Association was the only one that had pools.

Q. That is the only one you know of?

A. The rail makers may have had at times.

Q. How about plate?

A. I think a plate pool was formed in 1900.

Q. You know nothing prior to that?

A. Not in plates.

Q. How about the billet pool in 1900? Do you know anything about it?

A. Billet pools, I could not answer. I do not know.

Q. How about pig iron in 1900?

A. No pools that I know of. Some association known as the Valley Furnaces had a selling agent, I think, but nothing in the nature of pools.

Q. I am asking about arrangements in these several things.

A. No, the Furnaces had a common selling agent, I think, through the Ohio Valley.

Q. But do you know whether they fixed prices and sold at a common price? Have you knowledge on that subject?

A. No, I was not a purchaser of pig iron in that district. I have no personal knowledge.

Q. Then your own personal knowledge of pools is confined to the Structural Pool?

A. Confined to the Structural Pool.

Q. And to its operations and effects?

A. Yes.

Q. Were those pools when they were formed generally advertised in the papers, and the names of the members advertised and the terms of the agreement advertised, or were they secret generally?

A. No, they were widely known in the trade at the time and spoken of in the trade papers, and their prices were published.

Q. The prices at which they sold.

A. The names of the parties were known. In those days, and until I gave up active business, we never looked on those pools as in any manner, shape or form illegal; we thought we had a perfect right to make such arrangements, and we did not conceal them in any manner.

Q. You had a perfect right?

A. We thought we had a perfect right, yes.

Q. Those were things of such common, general notoriety that any man connected with the iron and steel business would be apt to know about that, wouldn't he?

A. Of pools?

Q. Yes.

A. Beam pools or structural pools?

Q. Yes.

A. I am speaking of structural pools only. I told you I had no personal knowledge of the others except the structural or beam pool, and I say that that pool was of entire notoriety and was spoken of from time to time in the trade papers, those who belonged to it were known, and it was known to the public and to the consumer.

Q. I understood that, but I was asking you further, and that is as to your knowledge and information as to other pools, and I understood you to say that they were so generally accepted as being legal processes that there was no secrecy about them, and it was a matter of common knowledge that they existed.

A. I was speaking of the beam pool alone.

Q. Then in all that you have said in your testimony in regard to the existence of pools and their operations, and

their effects upon prices, have you been confining it to the beam pools? If not, and if you had in mind in that connection other pools, please state what they were, and we will proceed to ask further about them.

A. I cannot, without referring definitely to my testimony, answer that question. I think, however, that I have testified in all cases whether I was speaking of pools generally or of one pool in particular.

Q. Now, I will ask you whether you know the effects and operations of pools generally, or only the effects and operations of this structural pool to which you have referred?

A. No, I think I know the effects and arrangements of that character generally.

Q. Arrangements of that character, and arrangements with respect to what? Just describe that now, those that you have in mind.

A. Profit sharing and the allotments of percentage among the several producers.

Q. How about fixing prices and selling at a common price?

A. Well, that was an incident.

Q. But do you know of any pools which had that as part of their agreement?

A. The fixing of prices?

Q. Yes; if so, state what they were.

A. I think the plate pool had a general price. In the pools that I knew of the matter of fixed prices was not observed.

Q. You say the pools you know of. Which were those?

A. The beam pool, from my personal knowledge; I speak of the others from my observance, being engaged in the trade.

Q. Name them, will you?

A. And the plate pool. There was at times a rail pool. There was at times a billet pool.

Q. What was the last one?

A. A rail pool. There were at times pools of lighter products, more highly finished products, which I do not know anything about.

Q. Take up the plate pools. Just state the periods that you know of when there were plate pools in operation and who were the members of them.

A. The first plate pool I recall was formed in 1900.

Q. How long did it last?

A. I think it lasted until about 1904, or thereabouts I am not exact.

Q. Were you ever at any of the meetings of that pool?

A. I was not.

Q. Did you ever see any of the agreements that were made by it?

A. I have seen what purported to be agreements, that were unsigned, I believe.

Q. Have you seen what you knew to be any agreement?

A. The only agreements I ever saw were produced in the Stanley investigation.

Q. Now, you say you have no knowledge of a plate pool except one formed in 1900 and continued until 1904.

A. That is correct.

Q. The billet pool. What knowledge have you of a billet pool?

A. I cannot give you any definite knowledge of billet pools, except my memory has an indistinct recollection at times of agreements between certain large makers of billets, but I would say I do not know.

Q. You cannot give any period of time for that?

A. No. I am too hazy on that.

Q. Tell me about the first rail pool you know about.

A. I cannot give you any data as to rail pools.

Q. Any information about it at all?

A. I had no personal connection.

Q. Then the only thing you can tell me about is the structural pool which you were in, and the plate pool which you have given some information in regard to?

A. Yes.

Q. Are those the only pools with respect to which——

A. I can give particular details.

Q. Well, are those the only pools with respect to which you know the operations of them?

A. That I personally know the details.

Q. You personally know the details?

A. Yes.

Q. As to those.

A. Yes.

Q. Give us the details as to the plate pool and who were in it.

A. The principal ones in the plate pool were the Carnegie Company, Cambria, the Illinois, Lukens, Central Iron & Steel Company, Worth Brothers; and I think Otis were in it. I am not sure.

Q. Did you ever attend any of their meetings?

A. I did not.

Q. Did you ever have anything to do with their prices?

A. I did not.

Q. Have any knowledge of their prices?

A. I did not. I may have had knowledge of their prices at the time. I do not recall the exact prices now.

Q. Were these details that you speak of, that you knew about, a matter of notoriety?

A. Yes.

Q. And common knowledge to people engaged in that business?

A. Yes.

Q. Was that knowledge so common and general that anyone engaged in the iron and steel business that was at all well informed would know of their existence?

A. They would.

Q. Did you know, Mr. Roberts, of the so-called wire nail pool which was in existence in the latter part of 1895 and the greater part of 1896?

A. No, I knew nothing of it. I was not either a buyer or seller of that class of material.

Q. Still, you were generally informed at that time of what was known generally in the trade papers and a matter of common knowledge?

A. Yes.

Q. And if such a pool existed at that time it was not a matter of such common knowledge as these other pools of which you have spoken, where you say every well-informed man would know of them?

A. Well, if I had knowledge of it at the time, I have no memory of it now.

Q. If you ever had any knowledge about that, you have forgotten all about it, have you?

A. Yes.

Q. Would you be able to state, then, whether or not in the latter part of 1896 and up to the end of 1897 there was considerable competition in the wire nail business and that prices were comparatively low?

A. Not from memory without the data before me, no.

Q. Well, you have no knowledge on the subject now?

A. No.

(Whereupon a recess was taken until two o'clock p. m.)

AFTER RECESS.

PERCIVAL ROBERTS, JR.,

the witness under examination at the taking of recess, resumed the stand for further

CROSS EXAMINATION (Continued),

By Mr. Dickinson:

Q. Mr. Roberts, questions and answers appear on page 9304 of your testimony, as follows:

"Q. Were those prices maintained at a uniform figure for long periods of time, or did they fluctuate during the existence of the pool?

"A. They fluctuated during the existence of the pool as shown on these charts. The matter of control in no sense of the word means uniformity."

Were you speaking then of any particular pool, or just generally of a pool?

A. That testimony, I think, was in connection with the Government exhibits.

Q. Yes, it was.

A. Showing the line, and the tables showing the prices of steel beams.

Q. Only with respect to steel beams, was it?

A. I think I was testifying at that time about that table.

Q. Wait a minute. Maybe you are right.

MR. SEVERANCE: That is what he was being examined about, with reference to that chart.

By MR. DICKINSON:

Q. The question was on page 9303:

"Q. During the operation of a pool such as the beam pool, how is it that prices fluctuate?

"A. They fluctuate in accordance with the supply and demand, always within reasonable limits, and that was the controlling factor of the beam pool, of which I can speak personally. Its object and purpose were to keep prices within reasonable limits and prevent destructive competition. That was its purpose and its object.

"Q. Were those prices maintained at a uniform figure for long periods of time, or did they fluctuate during the existence of the pool?

"A. They fluctuated during the existence of the pool as shown on these charts. The matter of control in no sense of the word means uniformity."

Now, in those answers which I have read, were you referring alone to the effect of the beam pool?

A. To the beam pool or any other pool formed along similar lines.

Q. What other pools formed along similar lines did you have in mind, if any, and intended to embrace, if any, in that answer?

A. I think the question you read as asked me by Mr. Severance was as to the operation of the beam pool or any other pool formed along those lines, and therefore I had no other definite pools in my mind, further than the fact of any other pool that might be formed along the same lines as the beam pool.

Q. That is to say that if there were any just like the beam pool, your answer would embrace them?

A. Yes.

Q. But you did not mean to say there were any just like it?

A. No.

Q. And that you were only speaking with knowledge as to the effect of the beam pool?

A. Personal knowledge, yes.

Q. Now, the next thing is:

"Q. That is what I wanted to get at.

"A. But it was a control within reasonable limits, as distinguished from destructive limits."

Now, what would you call a control by a pool within reasonable limits?

A. A price which would return to the producer a fair amount upon the capital invested.

Q. Suppose that there were different manufacturers in the same pool, and that on account of facilities and character of works, one could produce cheaper than the other, or one could produce cheaper than a number of others, or there was no close proximity in cost, then what kind of a control would be reasonable so far as prices were concerned to be affected by such a pool?

A. To enable a man who had adapted his establishment reasonably, who had kept his establishment reasonably abreast of the most advanced state of the art; those who had not done so would either have to do it or drop out.

Q. Drop out of what?

A. Manufacturing.

Q. I am speaking now, Mr. Roberts, of what kind of a control, within reasonable limits, did you have in mind? For instance, if it affected prices, what would you call keeping prices within reasonable limits?

A. I think I answered that question, sir, just now, when I said that prices kept within reasonable limits would mean a reasonable return upon a capital invested in a plant which had been reasonably kept up to the most advanced state of the art.

Q. Well, now, in that beam pool were the prices at which the products embraced in that pool were sold by the members of that pool fixed on any basis, and if so what basis?

A. I cannot answer that more fully than to say that they were at all times fixed upon a reasonable basis, and the chart in question so shows.

Q. This reasonable basis had a relation, had it, to the cost of production of the several members of the pool?

A. I should say that it had.

Q. Did you in the beam pool have before you any question of prices or cost of the various members of the pool, and was any price reached upon an investigation into the cost of production of the several members?

A. Yes. The theory of the pool was that the penalty which was charged the members for exceeding their percentage of output was supposed to be equal to the profit in producing the material.

Q. Well, the penalty was the same for all, was it not?

A. Yes.

Q. Did all of them produce at the same cost?

A. Not a very great difference, if you leave out of account the advantages one might have had over the other in the cost of his raw material; that of course would make that vary to a certain extent, but not to a very serious amount.

Q. Did you actually, in getting at the cost or price, take into account the cost of the product of the several manufacturers and fix the price with relation to that?

A. Yes, I think we did.

Q. You mean to say that you took up the cost of the con cern in any way, shape or form and arrived at that cost?

A. Yes, I think we did.

Q. Well, now, tell me who was present when any such thing as that was done?

A. All the manufacturers who were in the pool.

Q. Just name who they were and where such a meeting took place, and the time at which it took place?

A. No, I could not go into that in detail, so far as that, as to time.

Q. You cannot fix the time?

A. Because it took place at various times and at various meetings, the discussion.

Q. You mean the discussion in which you took up and

considered the cost of production of the several members of the pool took place at various times and at various meetings?

A. Yes.

Q. Can you name a single place or time at which such a meeting occurred, and those who were present? If so, give the name of the place and those who were present.

A. The place I should say probably was the Waldorf-Astoria Hotel in New York. Those that were usually present, I might say always present, were the representatives of the concerns who were in that pool. I know of no meeting at which all interested were not represented. They may have been represented at different times by different officers, but they were always represented, all the parties, represented by some one.

Q. At the meeting which you say occurred at the Waldorf-Astoria——

A. No special meeting, I said all the meetings.

Q. Can you give any special meeting?

A. No.

Q. At all these meetings did they go into the question of cost?

A. No.

Q. Give me one meeting and one place.

A. I told you I could not do it.

Q. Where any such thing was gone into.

A. I could not do it in detail.

Q. You say there was such a meeting?

A. I know there were meetings.

Q. Were there meetings at which you took up and considered the cost of production of each of the members of the pool and took that into consideration with respect to the price that the members of the pool were charged for the product?

A. We did.

Q. Did you have the cost sheets there?

A. No.

Q. What did you have?

A. We relied on the statements of the several manufacturers.

Q. Can you name anyone present at all at any of these meetings, who made such a statement?

A. I can name those who were present, and I know that statements were made by all.

Q. Just state what kind of statements were made.

A. I cannot give that to you in detail excepting to say that I did make such statements, and we all made such statements, as to the cost of manufacture and as to a reasonable selling price based thereon, and that determined our course of action.

Q. Did you make a statement——

A. Not only the cost of manufacture governed the matter, but also the supply and demand.

Q. Did you make a statement at any time at any place at any meeting of the members of this pool, showing what the cost of the Pencoyd Works was of producing the articles embraced in the pool agreement?

A. I undoubtedly did, yes.

Q. Who else made such a statement?

A. All the members present.

Q. What did these statements show?

A. They showed the cost of manufacture.

Q. The actual cost?

A. Yes, in round figures.

Q. In round figures?

A. In round figures.

Q. And of the several articles embraced in the pool?

A. Yes. Do not understand me, though, to say that that was the only governing factor in the matter of prices.

Q. No, you have not said that. Now, in estimating this cost upon which these statements were made, what did you include in the cost?

A. We included everything.

Q. That is, the cost of the ore?

A. Yes, it included cost of raw material, included shop costs, depreciation, overhead charges, and everything which entered into the cost of the material.

Q. And each of you then showed to the others the costs of the material and the cost of overhead charges?

A. Yes, we each knew the others' costs.

Q. I am not asking you that, but what each stated to the others at these meetings to which you refer.

A. Each stated in round figures what his cost of manufacture was.

Q. Was your cost the same as the Carnegie?

A. It was not very far different, if you leave out of the question the cost of the raw material, the ore, or take it at the point of pig iron. They came up to the mouth of the open hearth furnace with lower costs than we did at Pencoyd. From there on our costs were not dissimilar.

Q. Taking into consideration the question of ore holdings and of transportation—for the Carnegie had both, did they not?

A. At what time?

Q. At the time that pool was in operation.

A. No.

Q. In 1900?

A. No, that pool was formed in 1897.

Q. Which?

A. January 1, 1897.

Q. Were you in the pool of 1900?

A. Was I individually?

Q. Well, the Pencoyd Works.

A. The Pencoyd Works were in the pool up to the time that I left the presidency of the American Bridge Company, which was in the spring of 1902.

Q. And when did it go into the pool?

A. On January 1, 1897.

Q. And continued in it constantly?

A. Yes.

Q. How often did you make these disclosures in regard to costs, and consider that as an element in fixing the price?

A. I could not answer the number of times.

Q. At any period during that time did the Carnegie have superior advantages over the Pencoyd in respect to the ownership of ore and the transportation of ore?

A. You mean from the standpoint of price?

Q. I mean what it cost them.

A. Yes; their pig iron delivered to the mouth of their open-hearth furnace was a lower cost than the pig iron delivered at the mouth of the open-hearth furnace at Pencoyd.

Q. Take it from start to finish with them and from start to finish with you, which could produce beams cheaper, the Pencoyd or the Carnegie?

A. They might possibly produce them slightly below our cost; not very much. You see, from the time we reached the open-hearth furnace wages in the East were considerably lower than wages in Pittsburgh, so that while they started with a lower price for raw material, at the mouth of the open-hearth furnace, we caught up before we got to the home base.

Q. What time was that, now?

A. I am speaking between——

Q. Throughout the whole period of that pool?

A. Yes; that would apply to——

Q. Was that true of all the other companies in the pool besides yourself?

A. No, I think we had some advantages over others in the pool. We had a very modern mill, a very good mill for making structural material, and probably somewhat better than some of the others.

Q. There were some members of this pool, then, that could not produce as cheaply as the Pencoyd and the Carnegie?

A. That is correct, yes.

Q. And the price was made so as to allow a reasonable profit to everybody within this pool, was it?

A. No; those who were not as well equipped, their profit was lower. The profit was considered to be a fair profit on the best mills.

Q. On the best mills?

A. Yes.

Q. Then the others did not get a fair profit, is that it?

A. Yes, a fair profit ranges at no one fixed price or one point; a fair or reasonable profit may extend beyond two points. In other words, it is a line of some length; possibly my views of reasonable profit would not have exactly the same termini as your views of reasonable profit. They can differ in the extent of what would be reasonable profits.

Q. The weakest one in the pool got a fair profit?

A. No, I do not know that it did.

Q. Which one did not get a fair profit?

A. For instance, the Passaic Rolling Mill Company was one of the older mills; the Phoenix Iron Company was one of the elder mills. Whether you would term the fact whether they got a fair profit, it would not be as large a profit as the others.

Q. I understand that; but they got a fair profit, and the others got a larger one than they did, did they?

A. They got not so fair a profit.

Q. Not so fair?

A. Yes, sir.

Q. But it was fair, was it not?

A. Not so fair.

Q. What would you say about it being fair at all?

MR. SEVERANCE: He has answered that question twice.

MR. DICKINSON: He has answered it comparatively.

By MR. DICKINSON:

Q. I want to know if they got a fair profit.

A. If you will tell me what you call a fair profit I will tell you.

Q. If you will tell me what you mean by fair profit, that is exactly what I mean.

A. I say a reasonable return on the capital. They probably had not as much capital invested as some more modern plants, and consequently a smaller profit might be a fair profit to them when it would not have been to the others with their larger capitalization. When you consider that you want to charge off to depreciation the cost of a steel plant every ten years, as in that time it mostly goes in the scrap heap, one which has kept abreast of the changes and made the changes had to spend more money than one who remains in the condition in which he originally started, therefore those who are abreast of the art should have a larger profit to make a reasonable return on their capital invested.

Q. Which one of those was not abreast of the art?

A. The Passaic Rolling Mill Company; the Phoenix Iron Company.

Q. It could not make as cheaply, then, as the Carnegie or the Pencoyd?

A. No. Jones & Laughlin, Carnegie and Pencoyd made over seventy-five per cent. of the product of structural material made in the United States at that period.

Q. And these others did not make as cheaply as you could?

A. I think not; I know they could not.

Q. They could not have competed with you, could they; if you had sold at something above cost to allow you some profit, it would have put them out of business, wouldn't it?

A. No, I think it would put all of us out of business.

Q. You mean to say that if you sold your products at something above cost, allowing you some profit, and that you had a competitor who could not make as cheaply as you did, on the same product, that that would make you go out of business?

A. That depends altogether on what the difference of cost of production between the two concerns would be. A concern can continue to sell at cost and not go out of business. It can continue to sell below cost and not go out of business.

Q. I was putting a case where a concern of superior abilities, who could manufacture cheaper than another concern, should sell at a price that would be above its cost and allow it some profit, and yet below the cost to the other concern, whether that would necessarily put both of them out of business.

A. You have left out a controlling factor there, and without it I cannot answer your question, namely, what the obligations of each of these concerns might be in regard to capital charges. In other words, a concern might make two per cent. above cost and yet have capital obligations in the way of interest on bonds and dividends on stock, the latter, of course, not being obligatory, but the former being so, so that unless you know his interest charges you would be unable to say how soon he would go out of business, although he might have a profit on the material sold over and above the cost of manufacture.

Q. I understood you to say, though, Mr. Roberts, that it would necessarily put both out of business if the superior

concern sold a little above cost and at the same time that was lower than his competitor could make a profit on; do you say that?

A. It would depend altogether upon their obligations.

Q. Then, as a general proposition, you do not say that is universally true?

A. You cannot determine from the statement which you have made whether it is true or not.

Q. I am taking the statement which you made when you said it would put them both out of business; what did you mean by that statement?

A. What statement is that I made?

Q. I put the proposition to you, whether or not, if one concern that could manufacture cheaper than another, could sell at some profit and the price, however, at which it sold was lower than would allow a profit to the other concern, what would be the result, and I understood you to say it would put them both out of business. Now, is that necessarily and universally true?

A. I did not make that statement.

MR. SEVERANCE: May I ask a question about your question so that I will understand it?

MR. DICKINSON: Yes.

MR. SEVERANCE: You say "some profit." Do you mean on some particular line of product?

MR. DICKINSON: Yes, some particular line.

THE WITNESS: The question is a hypothetical one which, in the form it is asked, I am unable to answer.

By MR. DICKINSON:

Q. You did answer, though, a while ago, that it would put them both out of business?

A. No.

Q. What did you have in mind when you said it would put them both out of business?

A. State what it was I said.

(The stenographer repeated the questions and answers as follows:)

"Q. They could not have competed with you, could they,

if you had sold at something above cost to allow you some profit, it would put them out of business, wouldn't it?

"A. No, I think it would put all of us out of business.

"Q. You mean to say that if you sold one of your products at something above cost, allowing you some profit, and that you had a competitor who could not make as cheaply as you did on the same product, that that would put you out of business?

"A. That depends altogether upon what the difference of cost of production between the two concerns would be. A concern can continue to sell at cost and not go out of business. He can continue to sell below cost and not go out of business."

By Mr. Dickinson:

Q. What did you mean when you answered that?

A. From the shape in which the question was put, I interpreted that you meant so narrow a margin between cost and selling price that it would be insufficient in the usual practice to enable them to meet their obligations as to interest on capital.

Q. What was your first acquaintance, if any, with the nail pool and its operations, the wire nail pool?

A. I have no knowledge of it whatever.

Q. Do you feel pretty confident about that?

A. I do, yes.

Q. You have testified with regard to some transactions that were reported in the minutes of specific meetings, on your direct examination, remembering specific meetings, and also what transpired. I am going to see if I can refresh your memory to see if you can recall this. I read from Government Exhibits, Volume III, page 1015, Minutes of the Carnegie Steel Company, Limited, February 18, 1896. (Reading):

"A. R. Whitney to H. C. Frick"——

Mr. Severance: I object to this as an improper way of refreshing the recollection of the witness, the same purporting to be a letter written by an individual not a party to this action at a date long prior, to wit, about five years, to the organization of the defendant corporation, presented at a meeting of a

corporation of which the witness was not a member, and at which he was not present. The same is incompetent and hearsay, irrelevant and not cross examination, for the reason that upon direct examination no question was asked the witness relative to any wire pool.

MR. DICKINSON: But questions were asked as to pools and the effect and operation of pools, in the testimony given by Mr. Walker.

I will read, and see if this refreshes your recollection.

"Mr. Carnegie requested me to work up a pool on beams. Mr. Fayerweather, who has been persistently calling to see if something could not be done, called in and I said to him that something might be done if he would call a meeting, and that if he would call a meeting, I would attend it. He called a meeting at 1:00 o'clock today, and there were present: Mr. Bedell for the New Jersey Steel & Iron Company; Mr. Watts Cook and Mr. Fayerweather for the Passaic Rolling Mill Company; Mr. Percy Roberts for Pencoyd; and a Mr. Reeves for Phoenix; and Mr. Atkins for Pottsville."

Do you recall that meeting?

A. What date is that?

Q. This letter was written at New York, February 12, 1896.

MR. SEVERANCE: It does not say so.

MR. DICKINSON: It is in the minutes, reported at a meeting, and it says February 12.

THE WITNESS: I think I recall such a meeting, yes.

By MR. DICKINSON:

Q. (Continuing) He goes on:

"I explained to these people the workings of the wire nail pool and said nothing more."

Do you recall that explanation?

A. No.

Q. You have forgotten about that, have you?

A. I have, and I would not have recalled the other meeting if you had not read it there and said that I was present. That brought it to my mind.

Q. I did not say you were present; the letter says you were present. I do not know whether you were or not.

MR. SEVERANCE: I should suggest that you permit him to finish his statement. What were you going to say, Mr. Roberts?

THE WITNESS: I say that after hearing that letter read I have a hazy recollection of such a meeting, but as to what took place at it I could not at this time recall.

By MR. DICKINSON:

Q. (Continuing) He goes on:

"I explained to these people the workings of the Wire Nail Pool and said nothing more. A motion was made to appoint a committee of five to formulate a plan to improve the condition of the beam business, and the committee appointed consists of Mr. Bedell of the New Jersey Steel & Iron Company, Mr. Watts Cook of Passaic, Mr. Percy Roberts of Pencoyd, and Mr. Reeves of Phoenix; also a representative to be appointed by the Carnegie Steel Company, Limited, and Mr. Bedell is to call a meeting, and you can appoint a representative to attend it if it meets your approval.

"After that was passed a proposition was made that we have an understanding that no beams should be sold in New York or Philadelphia for less than 1½ cents per pound for 15" and smaller, nothing said about 20" and 24.""

THE WITNESS: Is that in the letter?

Q. (Continuing) that is all in the letter I read you.

"and the list of extras adopted last September should be adhered to.

"These were the minimum prices and that arrangement was signed by everybody present and will be sent to Jones & Laughlins tonight, and you can see them in regard to it, if you choose. I signed it with the understanding that it was not binding after I had ascertained that price had been cut, and for New York only.

"To-morrow I shall cover all our customers on any estimates they have out at the 1.40 prices, and notify them to base their estimates on 1.50 in the future."

A. Surely a Carnegie practice.

By MR. DICKINSON:

Q. "Mr. Roberts said he would see that J. Ogden Hoffman signed the agreement for you at Philadelphia."

Now, do you remember your signing this agreement referred to here?

A. No, I do not; my recollection is that the prices through the year 1896 were open prices, and the formation of the beam pool was on January 1st, 1897. There may have been some temporary arrangement or agreement of that character at about that time, but I have no recollection of it.

Q. You say "open prices." What do you mean by open prices?

A. No understanding whatever as to prices.

Q. Now, did you get Mr. J. Ogden Hoffman to sign this agreement?

A. I do not recall.

Q. Who is he?

A. He is dead.

Q. Who was he?

A. He was the representative of the Carnegie interests in Philadelphia.

Q. The representative of the Carnegie interests?

A. Yes.

Q. And you were to get the representative of the Carnegie interests, according to this, to sign the agreement?

A. According to what you have read, yes.

Q. I will read you, and ask if you have any recollection of this statement appearing on page 1020 of the same volume, under the minutes of March 3, 1896:

"Mr. Frick"——

MR. SEVERANCE: I object to this as wholly improper cross examination, as the paper counsel is about to read from purports to be the minutes of a corporation on March 5, 1896, of which corporation the witness was not a member, and at the meeting of which he was not present, and the same is likewise objectionable as not cross examination, and irrelevant.

By MR. DICKINSON:

Q. (Reading:)

"Mr. Frick: A. R. Whitney is an important factor in this matter, and as he will be South, we can probably arrange a

postponement of the meeting. Prices have already advanced as the result of the preliminary meetings.

"Mr. Peacock: Yes, and it looks now as if Phoenix, Pencoyd and ourselves will agree on prices without any pool."

Can you state anything from your recollection, after reading this, in regard to these preliminary meetings, or whether there was any arrangement or understanding as to whether or not the Phoenix, the Pencoyd and the Carnegie did agree on prices with or without a pool?

MR. SEVERANCE: I make the same objection, and I add to it the fact that this meeting was long anterior to the organization of the defendant, the United States Steel Corporation.

THE WITNESS: I do not now recall.

By MR. DICKINSON:

Q. I ask whether or not this refreshes your recollection, and whether you know anything about these facts in connection with the prices of beams; at page 1017, the same volume——

MR. SEVERANCE: I object to this as improper cross examination——

MR. DICKINSON: Suppose you just repeat the same objection.

MR. SEVERANCE: Yes, I will do that; the same objection as to the last two preceding questions.

By MR. DICKINSON:

Q. (Reading:)

"Mr. Frick: The Board appears to be unanimously in favor of forming some combination on beams"——

A. What date is that?

Q. The date was the same meeting, February 18, 1896.

"The Board appears to be unanimously in favor of forming some combination on beams, providing, however, that the advance in price shall not be to a point which will permit foreign beams to come in or will encourage the smaller mills to begin or resume the manufacture of beams."

Have you any recollection now——

MR. SEVERANCE: Do you want to read those next four or five words, Judge?

By MR. DICKINSON:

Q. (Reading:) "To this there was no dissent." Do you know what smaller mills then had stopped the manufacture?

A. I have not any idea in my mind to what that referred.

Q. Have you any recollection regarding the facts here stated?

A. No, I have not.

MR. SEVERANCE: How could he? He was not at the meeting.

MR. DICKINSON: I am not asking him as having been at the meeting, but I am asking if he, on account of his association with these negotiations of the beam pool, has any recollection or knowledge of the facts there stated. I thought the witness understood that. Of course Mr. Roberts was not there.

By MR. DICKINSON:

Q. Do you remember whether or not, prior to September 8, 1896, there had been a beam pool, during the pendency of which there had been considerable price cutting?

A. Whether there had been a beam pool prior to what date?

Q. September 8, 1896.

A. Oh, yes; there had been beam pools as far back as the eighties.

Q. But the question is, whether or not you remember that next preceding September 8, 1896, I will put it that way, there had been in existence a beam pool to which you were a party and under which some of the parties to it had been cutting prices prior to that time.

A. I could not say. I know there was an open market in November, 1896.

Q. I will see if this refreshes your memory, and ask you what recollection you have about it; page 1037 of the meeting of September 8, 1896.

MR. SEVERANCE: Of the Carnegie Steel Company, Limited?

MR. DICKINSON: Yes, the same thing.

MR. SEVERANCE: I object to that on the same grounds, and in addition call attention to the fact that the corporation named, to wit, the Carnegie Steel Company, Limited, is not a party to this cause.

By MR. DICKINSON:

Q. (Reading:)

"Mr. Peacock: Our order mail keeps up well, but new business is light. The Eastern beam manufacturers are not holding prices; that is, they are not cutting the nominal beam price, but are throwing in extras. They are taking contracts for buildings with erection below cost. At the 1.7 cent price we are losing business. Whitney thinks we should make the price 1.5, but I think we should go at once to 1.3, then there could be no cutting.

"Mr. Leishman: Whitney wants a meeting called for next week, but I told him to wait a little. The architects have plans in hand for buildings requiring about 25,000 tons for this year, and we would like to get some of this before calling a meeting and making an open cut in price.

"Mr. Frick: If it does not affect the price of beams already sold, I think we should not lose any business in New York because of the price.

"Mr. Leishman: The price on contracts already made would not be changed.

"Mr. Frick: It appears to be the sense of the board that we should secure this 25,000 tons, cutting to 1.3c. if necessary."

Now, do you recall anything about that cutting of price?

MR. SEVERANCE: I make the same objection.

A. I do not, but from the reading of these letters it would seem to me that during a portion of 1896, at least, there was some understanding as to prices in beams.

By MR. DICKINSON:

Q. Was the Pencoyd a party to that understanding?

A. I should think if the others were they were. I have no distinct recollection, but it sounds very much that way. The letter you just read, Mr. Peacock was not a good

prophet, though, because 1.3 did not stop the competition, but one cent a pound did.

MR. COLTON: I think if he went on he could refresh your recollection.

By MR. DICKINSON:

Q. What date did you speak of where you spoke of that price?

A. November, 1896.

Q. What was the price then?

A. One cent a pound delivered in New York.

Q. How long did that price prevail?

A. For probably sixty days.

Q. How near was that to the cost of production of the Carnegie Company?

A. Why, it was below cost.

Q. Below the cost to the Carnegie Company?

A. Below the cost to anybody.

Q. How many people went out of business on account of it?

A. If it lasted long enough we all would go.

Q. How many did go out?

A. None.

Q. And the Carnegie reduced the price below the cost?

A. Yes. I think Carnegie made cheaper beams than anybody.

Q. And still nobody went out of business?

A. They did not.

Q. And then they got together and formed a renewal of the pool?

A. On January 1st they formed a beam pool. It was not a renewal.

Q. Then the price went up, did it not?

A. Yes. I think probably it went to about a cent and a half a pound.

Q. How long did it stay at that?

A. I could not tell you offhand. The chart will show that.

Q. What chart?

A. The one we had in evidence yesterday.

Q. The Walker chart?

A. The Walker chart shows the price of beams as given in the Iron Age at Pittsburgh.

Q. Mr. Roberts, you were questioned in regard to technical improvements in the steel industry in the latter half of the decade preceding the year 1900, and I understood you to say that there was no special technical improvement during that time. Is that a correct statement of your answer?

A. I did not express myself in quite that way.

Q. I am going to ask you, rather than turn back to the testimony, I would ask you what you mean by technical improvements in that connection. You did give testimony in regard to technical improvements in the steel business during that period. What would you call a technical improvement in the sense in which you were questioned and answered?

A. I think I spoke of certain revolutions and changes in the process of manufacture from iron to steel and from acid steel to basic steel, and the driving of machinery by electricity instead of steam, all of which I stated occurred prior to the year 1890. There are technical improvements of course in detail which are going on all the time, every day, and have gone on since the beginning of the industry and are continuing. I said as to the year 1895 the only change which had occurred at that time was the introduction of Mesabi ore.

Q. Do you call that a technical improvement?

A. No.

Q. The steel is the result, is it not, of extracting and utilizing ores in connection with certain machinery, isn't it, and other constituents that are put with the ores?

A. The ores are charged with coke and limestone into a blast furnace and the resultant product is pig iron.

Q. The Mesabi ores prior to 1895 had not been in very large use, had they?

A. They were practically not used at all; they were practically undiscovered.

Q. That is what I understood you to say.

A. Yes.

Q. Afterwards they began to be used more?

A. They did, from year to year.

Q. Why were they used more; at first were they adaptable or thought to be adaptable economically?

A. When the ore was first introduced, due to its physical condition, it being very fine, almost like powder, the blast furnace engineers were fearful that by its use they would clog their furnaces and they therefore were willing to use it in their burden only to a limited extent. As they became more familiar with it and gradually increased it, in some cases increasing the pressure of their blast, they found that they could increase its use and they did so.

Q. Did they find that by using more coke and a large proportion of coke they could utilize it more economically than they had before?

A. No.

Q. Then tell us, please, what were the things that changed that from non-profitable to a profitable use.

A. That was never a non-profitable use.

Q. Then to a more profitable use.

A. Not a more profitable use, as I understand.

Q. Well, a more economical availability.

A. It was not that.

Q. Well, just tell it; I have tried to find something that would hit your ideas. Please tell us what it was, exactly.

A. I am trying to tell you.

Q. All right; go ahead.

A. In former times most of the ore was of a compact, stony nature.

Q. You mean the Old Range ores?

A. The Old Range ores.

With those Old Range ores they mixed a certain percentage of softer ores, and this was their regular practice. Upon the introduction of the Mesabi ore they found an ore, as I have just said, of different physical characteristics; it was very fine, and they were fearful if they used it in too large a percentage that they would clog their furnaces, and they therefore commenced using it as a very small percentage of their charge. As they got more confidence in this ore and knew its characteristics and operations, and by some slight increase in the pressure of their blast, they overcame those difficulties

and found that they could successfully use it to a very large percentage of their burden.

Q. Up to fifty per cent.?

A. Yes. I think that they used it at more than fifty per cent.

Q. When did they find out they could do that?

A. It was a gradual evolution extending over a period of probably five, six or seven years.

Q. Beginning when?

A. About 1895.

Q. And becoming more and more developed?

A. Oh, yes, ever since.

Q. Now, you would not call that a technical development?

A. No, sir.

Q. Was it an important factor in the production of steel and the cost of the production of steel and steel products in the last half of that decade?

A. No.

Q. It had no effect upon the cost of steel, the reduction of cost to those who were supplied with other ores?

A. To those who were supplied with other ores, no.

Q. To those who used that ore, did it make the production of steel less expensive?

A. It would depend upon what price they paid for that ore in relation to the prices they paid for the other ore.

Q. Take the prices that they were paying for that ore from 1895 on, as compared with prices they were paying for other ores which this ore by an increase of percentage supplanted, and state whether or not that increased substitution of the Mesabi ores increased the cost of steel and steel products?

A. No, I do not think it did.

Q. Was the Mesabi ore less or more expensive to mine?

A. At first, in the very early stages, it was cheaper.

Q. What stage is that?

A. The very early stage, when it was at the surface of the ground.

Q. When was that?

A. That was in the year 1895.

Q. And how long did that continue?

A. I could not say; it would depend on different mines.

Q. Mr. Roberts, don't you know that the Mesabi ores from 1895 have been mined cheaper than the other ores in the Lake Superior region down through the last half of the decade of which we were speaking and continuing into the next decade?

A. That would depend on what you mean by other ores. As a general proposition the Mesabi ore was a steam shovel proposition, and at first was mined cheaper.

Q. What ores were used mainly by the Carnegie Company before 1895 in the production of steel?

A. Back to what period?

Q. Beginning with 1894, in 1894.

A. Lake Superior ores.

Q. What kinds?

A. Various kinds; I could not give you a detailed list of the mines.

Q. No, but can you tell what the names were?

A. No, I could not.

Q. Can you tell anything about it at all?

A. Lake Superior ores; that is all I can say to you.

Q. Were they Old Range ores?

A. Undoubtedly.

Q. Do you know what proportion of Old Range?

A. I do not know.

Q. Were they Vermillion ores?

A. Possibly.

Q. Do you know what proportion of Vermillion ores?

A. No; probably those proportions varied from day to day and from month to month.

Q. Do you know when the Carnegie Company began to use Mesabi ores?

A. They were among the first, I think.

Q. But do you know when they began?

A. About 1895.

Q. Do you know that as a fact?

A. I think so, because I think you will find no Mesabi ore was shipped before 1894, probably.

Q. Take the Mesabi ores that they used, beginning in 1895,

down to the year 1900; do you say that those ores were not cheaper to the Carnegie Company than the other ores that they had been using prior to that time, and the other ores of different kinds that they used during that time?

A. I really do not know anything about it, unless I know what the cost of the other ores were to the Carnegie Steel Company.

Q. You do not know anything about the cost?

A. No, I do not.

Q. Do you know anything about the cost of Mesabi ores to them, from 1895 to 1900?

A. I do not.

Q. Do you know anything about what it cost them to make steel in 1894?

A. The Carnegie Steel Company?

Q. Yes.

A. Yes, I think I do.

Q. What did it cost them to make steel in 1894?

A. I can not give it in detail. I knew at the time.

Q. Was it profitable or unprofitable?

A. In 1894?

Q. Yes.

A. Profitable.

Q. Was it more profitable in 1894 than it was in 1895, or less?

A. I could not answer that.

Q. How about 1894 and 1896?

A. 1896 was somewhat of a lean year.

Q. A lean year in ores?

A. A lean year in prices.

Q. Well, but how about the cost of production? Was it a lean year in that?

MR. SEVERANCE: What do you mean by that?

MR. DICKINSON: I mean the cost of making steel in that year, as compared with 1894. He said it was a lean year, and he said as to prices.

By MR. DICKINSON:

Q. (Continuing) I want to know if you meant that lean

year to indicate anything in regard to the relative costs of making steel in those two years.

A. Well, I think it was the last year of the Democratic administration, and wages were pretty low that year.

Q. Well, was the cost then of steel lower or higher?

A. Wages lower, the cost of making steel necessarily would be lower.

Q. How about the cost of ore, as between the Mesabi and the Old Range ores for that year?

A. In those days the selling price of Mesabi ore was lower than the selling price of the Old Range ores.

Q. Now, you spoke of the wages in 1896. Do you know whether the Carnegie paid lower in 1896 than they did in 1894, of your own knowledge?

A. I cannot give the dates of changes in wages, but I know that they were having some pretty hard sledding about that year.

Q. Were wages any different during that year for mining Mesabi ore than for mining Old Range ores?

A. Yes; I think the wages on the Mesabi range would be less than the Old Ranges.

Q. Were you on the Mesabi range during that year?

A. I was not.

Q. Do you know what the wages were?

A. I do not.

Q. Were you on the Old Range that year?

A. I was not.

Q. Do you know what the wages were there?

A. I do not.

Q. Do you know anything about the different conditions that prevailed in respective sections at that time?

A. Yes.

Q. What were the differences, if any?

A. The Mesabi range was simply digging earth off the surface of the ground, sometimes with a steam shovel, whereas many of the Old Range mines were deep mines and carried on by mining operations under ground. One had to be handled with a competent miner, and the other by any one who could

handle a pick and shovel; naturally the cost of the Mesabi production was less than that of the Old Range.

Q. It was less?

A. Yes.

MR. SEVERANCE: He said it was less.

MR. DICKINSON: I didn't understand him.

MR. SEVERANCE: Yes, he said that several times.

By MR. DICKINSON:

Q. I will go back to this proposition, whether or not you know that the cost of production of steel from 1895 to 1900, as compared with 1894, was lessened by the increased use of Mesabi ores.

A. I should say not.

Q. You say it was not?

A. To any appreciable extent.

Q. You do not know what they paid for either, do you?

A. I do not, because I do not know whether they owned their ores or bought them.

Q. Do you know what price the Mesabi ore was at any period of that time?

A. In the open market?

Q. Yes.

A. No, I do not recollect at this time.

Q. Did you ever run any furnaces?

A. At that time?

Q. Yes.

A. No.

Q. Did you buy any ores?

A. Yes.

Q. For what purpose?

A. Open hearth steel making.

Q. In what quantity.

A. I could not give you offhand the tonnage.

Q. About how much tonnage for the year?

A. I could not say.

Q. Can you approximate it at all?

A. No, it would vary, depending upon the nature of the output.

Q. Did you buy any Mesabi ore during that time?

A. No; they were not used for the purpose, could not be used.

Q. What ores did you buy?

A. Largely Port Henry, New York.

Q. Did you buy any from the Lake Superior region?

A. I think at that time we had some of the hard ores, yes.

Q. Do you know that you did?

A. Yes, sir; I think we did.

Q. Where were they from?

A. I could not tell you now. I do not remember.

Q. Do you remember whether they were Old Range or Vermillion?

A. They would be Old Range ores.

Q. Do you know the price you paid for them?

A. I do not.

Q. Mr. Roberts, was the development and use of the Mesabi ore during the years 1895 to 1900, inclusive, to the extent that it was developed and used an important factor in the steel industry?

A. To the extent that it enlarged our ore supply, it was, yes.

Q. Did it have any material bearing upon lessening the cost of the production of steel during that period?

A. Not appreciably during that period.

Q. Did it appreciably during any period?

A. Yes. I think that it has——

Q. When?

A. It had some bearing on costs after the practice was fully developed so that the maximum quantity could be used, which has taken place since probably 1900 or 1901.

Q. Do you mean after it began to be used as a larger source of supply that it did affect the cost?

A. I think so, yes.

Q. And cheapened it?

A. I think it did, yes, to those who had bought it at the original low values which were placed on those properties; just in proportion as they found that they could use a larger burden of that ore the price of that ore appreciated in value

very materially. Now it would depend entirely as to how much it reduced the cost to manufacture to know the values at which its owners used it in their furnaces.

Q. When did it reach the point of consumption where the percentage of combination was such as to appreciably affect the cost of production of steel, what year?

A. I think I said probably along in 1901 and 1902. There was no definite period of time that I can put my finger on, because one man with his facilities probably was using a larger burden than another man who had not the same facilities.

Q. And before that the proportion of use was so small that it did not materially affect the cost of steel. Is that your idea?

A. It did not materially affect the cost.

Q. What percentage had to be reached, under your conception of the matter, before it did materially reduce the cost of steel? What percentage in combination, I mean?

A. 60 or 70 per cent., somewhere.

Q. 60 to 70.

A. Say 50 to 60.

Q. 70 per cent. would materially reduce it, or not?

A. Yes, I think it would.

Q. Would 60 per cent. materially reduce it, or not?

A. It would reduce it less materially than 70.

Q. Would 50 per cent. materially affect the cost of steel?

A. Depending on the relative values.

Q. All other conditions being the same, now; I am dealing with percentages, and all other conditions being the same——

A. No, you cannot, unless you know the prices.

Q. But you did not ask anything about prices when you spoke of 70 per cent. and 60 per cent.?

A. Well, we are getting down now to a smaller percentage, and I say, from what I know of the situation, that 70 per cent. would reduce the cost, and so would 60 per cent.; when you get to 50 per cent. you are beginning to get so near the balance that you must know——

Q. You are not so sure about 50 per cent.?

A. No. Price plays an element there.

Q. What amount of Mesabi ore was used in 1904, what tonnage?

A. I could not give you the tonnage. It is a public record.

Q. What tonnage was used in 1905?

A. An increase in tonnage over 1904.

Q. Materially or not?

A. Well, it was increasing constantly from the start.

Q. When did it get to a point that it appreciably affected, in comparison with the amount of other ores used, the amount of steel production?

A. I said when it reached about 50 per cent. to 60 per cent.

Q. That was the proportion of mixture, but I mean——

A. That would be the proportion of shipments, too.

Q. We were speaking about the particular manufacture and its proportion or mixture.

A. That would hold good for shipments.

Q. But there might be fifty per cent. of the whole amount shipped, and some might use it in different proportions than others, might they not?

A. Yes, and they undoubtedly did.

Q. Have you any idea of the amount of Mesabi ores that were consumed in the year 1899?

A. No.

Q. Or 1898?

A. The statistics of the American Iron & Steel Association will give that very fully.

Q. Yes, I know, but I would like to know what you know about it.

A. No, I cannot state.

Q. Those statistics are very good, but——

A. Those figures are beyond me.

Q. Can you give anything approximating it?

A. No; I really cannot.

Q. Can you come within 500,000 tons?

A. No.

Q. For any one of those years?

MR. SEVERANCE: I object. It seems to me that is a great waste of time. The witness says he does not know, and you have established his ignorance, and I think you should be satisfied.

MR. DICKINSON: I do not think I am wasting time.

By MR. DICKINSON:

Q. Well, would or not the use of a million tons of Mesabi ore in the United States in the year 1897 have materially affected the cost of the production of steel?

A. I do not know.

Q. How about two millions of tons?

A. I do not know.

Q. How about three millions?

A. Without inserting prices, I could not tell you.

Q. Assuming that the prices were as low then as they have been since the United States Steel Corporation was formed.

MR. SEVERANCE: I object to that question.

MR. DICKINSON: I am trying to meet Mr. Roberts' objections and want to give him a price that he can assume.

MR. SEVERANCE: Have you finished your question, Judge?

MR. DICKINSON: Yes.

MR. SEVERANCE: I object to that as asking for a conclusion and not cross examination and irrelevant.

(The question was repeated as above recorded.)

MR. SEVERANCE: I make that same objection. The vice in the question consists not wholly in the last question, but in the preceding questions which I did not object to, simply because I thought they would only be asked once, but as apparently it is intended to ask them over and over again, I think it is time to make the objection.

(The question was again read as above recorded.)

THE WITNESS: What prices?

By MR. DICKINSON:

Q. The prices of Mesabi ore.

MR. SEVERANCE: The same objection.

THE WITNESS: The hypothetical question is so incomplete that it would be impossible for me to answer it.

By MR. DICKINSON:

Q. Well, Mr. Roberts, can you give approximately the amount of Mesabi ore used in the United States for any year prior to 1901?

A. No, sir.

Q. Take the year 1897.

MR. SEVERANCE: I object to that as a repetition over and over again. He has answered as to each year.

MR. DICKINSON: This will be a little variation.

By MR. DICKINSON:

Q. Take the year 1897. Can you state whether it was nearer 1,000,000 or nearer 5,000,000?

MR. SEVERANCE: I make the same objection that I made to the last question; it is not cross examination; immaterial and irrelevant.

By MR. DICKINSON:

Q. Take any of the years prior to 1900. Can you state whether the amount used for such year was nearer 1,000,000 or 5,000,000?

MR. SEVERANCE: I make the same objection.

THE WITNESS: I have already stated that I have no figures whatever in that respect in my mind.

By MR. DICKINSON:

Q. Can you state for either one of those years whether or not the production of ore from the Mesabi Range equalled or exceeded the production from all of the other ore fields of the Lake Superior region?

MR. SEVERANCE: I make the same objection.

THE WITNESS: Which years?

By MR. DICKINSON:

Q. Any of those years?

A. Which year?

Q. From 1895 up to 1900, inclusive.

MR. SEVERANCE: I make the same objection.

THE WITNESS: No. During that period the Mesabi output was increasing much more rapidly than the output of the other districts, however.

By MR. DICKINSON:

Q. Mr. Roberts, I have questioned you somewhat on this

subject, but I have not had time to go over the testimony. I am not clear. I would like to ask you whether or not you have ever heard of such a thing as a base price for 15-inch beams or a base price for beams at all?

A. I think I said yesterday that what were known as regular sizes of beams were those between three and fifteen inches; that for beams more than fifteen inches in depth up to and including 24 inches, we had a higher price than those between three and fifteen inches.

Q. Yes, but what I want to know is whether you understood in the trade that there was a term used such as base price for 15-inch beams or base price in connection with beams at all.

A. Not during my active connection with the business. If that term "base price" has been introduced since then, it may have been, but we spoke of regular sizes from three to fifteen inches, and those over fifteen inches were an extra price.

Q. Did you ever hear of such a term as combination prices, which were figured by using a base price for 15-inch beams, and then the other extras being added to that, the extra elements of cost?

A. We had a combination price which was based upon the price of plain beams plus such work as might be done upon them in the way of punching, riveting, fittings, and so on.

Q. You did, then, have such a price for beams?

A. Plain beams. Plain beams carry certain extras in the way of punching, fitting and riveting, and there was one-tenth of a cent a pound for punching, and one-tenth of a cent a pound for riveting, which was added to the price of the plain beams.

Q. And whether you knew it as a base price or not, there was such a price?

A. There was a price for plain beams, yes. That price was then taken and these extras added to it for the various work done upon it.

Q. Plain beams of certain sizes?

A. Plain beams were sizes between three and fifteen inches.

Q. Mr. Roberts, state, if you know, approximately what it cost to produce rails from pig iron in April, 1897.

A. I would not venture a guess.

Q. How about 1898?

A. It would depend with each establishment upon a number of conditions with which I would not be familiar at this time at all.

Q. Would your answer be that as to all subsequent years?

A. Yes.

Q. What was the cost of producing billets in the year 1897?

A. You are speaking now of an average cost in the United States, I suppose?

Q. Well, say of such a concern as the Carnegie.

A. What year?

Q. 1897.

A. I cannot give you the figure.

Q. Can you give any approximation of it?

A. No.

Q. Can you give any approximation of it for any subsequent year?

A. No.

Q. What was the cost of making rails from pig iron by the Carnegie in 1897?

MR. SEVERANCE: You have already asked that question and he says he don't know.

THE WITNESSS I don't know.

MR. DICKINSON: Yes, I have asked that. It is a repetition.

By MR. DICKINSON:

Q. Do you know what the comparative cost of production to the Carnegie Company in 1897 was, as compared with previous years of that decade?

A. I do not, Judge Dickinson, no.

Q. Do you know whether it was less to the Carnegie Company in 1897 than it ever had been before?

A. I do not know.

Q. What do you understand by the term "conversion costs, pig iron to rails"?

A. It would depend somewhat upon the context, how it was used. It might include——

Q. Do not use any context at all; I am giving you the whole context.

A. But I want to know what conversion includes; that is all.

Q. From pig iron to rails.

A. Yes, but does it include overhead charges and depreciation?

Q. Assume that it includes everything, now; overhead charges and everything else.

A. There is not a universal practice in that respect. To illustrate what I mean, there were some letters written at one time as to the cost of manufacture of steel rails to the Carnegie Steel Company. That was only a partial and not a complete analysis of the subject. Now, in that instance they used "conversion" to mean simply the cost of manufacture, including labor, repairs and the ordinary running of the plant.

Q. You mean from pig iron?

A. From whatever point they took it at. On the other hand, complete conversion cost would allow for depreciation, interest charges, overhead charges, etc.; therefore, I was unable to give you a definite answer.

Q. I will ask you this question: Letting the term "conversion cost" include everything, and taking the conversion from pig iron to rails, would you say that $4.50 was a reasonable cost?

A. From pig iron to rails?

Q. Yes.

MR. SEVERANCE: What period do you mean?

MR. DICKINSON: 1897; that is the year I spoke of.

THE WITNESS: For whom?

By MR. DICKINSON:

Q. The Carnegie Company.

A. How much?

Q. $4.50 was the figure I gave you.

A. $4.50 from pig iron to rails?

Q. Yes.

MR. SEVERANCE: I object to that as incompetent, not cross examination, and irrelevant.

By MR. DICKINSON:

Q. What would you say?

A. I should say it was too low.

Y. You say it was low?

A. Too low.

Q. How about $4.70?

MR. SEVERANCE: I make the same objection.

MR. DICKINSON: He seems to have some idea on the subject.

MR. SEVERANCE: He undoubtedly has a great many ideas on the subject, but that does not make it relevant testimony, or cross examination.

MR. DICKINSON: He is smiling now; I think he is going to give us something good on that.

By MR. DICKINSON:

Q. How about $4.70?

A. If you want to see me smile, just get through.

MR. SEVERANCE: He has one leg on the steamer, and he wants to get the other one on.

By MR. DICKINSON:

Q. How about $4.70?

A. That is less low than $4.50.

Q. Would it be reasonable?

A. No; I think that is too low.

Q. How about $5.00?

MR. SEVERANCE: I make the same objection.

THE WITNESS: Using "conversion" in the sense of what?

By MR. DICKINSON:

Q. Including overhead charges, everything.

MR. SEVERANCE: And depreciation.

THE WITNESS: Entirely too low.

By MR. DICKINSON:

Q. Do you know the cost at any time to the Carnegie of the manufacture of any of its products?

A. Not from examination of their books I do not, no. I have seen their costs of manufacture after they came into the Steel Corporation, but not previous thereto.

Q. Previous to that you do not know anything about the cost, do you, to the Carnegie Company of any of their products?

MR. SEVERANCE: I object to that as not cross examination; and it is irrelevant.

MR. DICKINSON: I think you will see the relevancy of it later.

By MR. DICKINSON:

Q. How about that?

A. What was the question?

(The stenographer repeated the pending question.)

THE WITNESS: Not in actual dollars and cents.

By MR. DICKINSON:

Q. Do you know what figure approximately would represent the cost to the Carnegie Company at any period prior to 1900 of any product made by it?

MR. SEVERANCE: The same objection.

THE WITNESS: The same answer as to the preceding question.

By MR. DICKINSON:

Q. How about the Illinois Steel Company?

MR. SEVERANCE: The same objection.

THE WITNESS: The same answer.

By MR. DICKINSON:

Q. Can you give us any information at all on that subject?

A. Not in dollars and cents.

Q. Can you give it approximately?

MR. SEVERANCE: The same objection.

THE WITNESS: No.

By MR. DICKINSON:

Q. Do you know anything about it, the cost of any of the products of either the Carnegie or the Illinois prior to 1900?

Mr. Severance: The same objection.

The Witness: Not in dollars and cents.

By Mr. Dickinson:

Q. What do you mean by dollars and cents; you mean actual dollars and actual cents?

A. Yes.

Q. Can you give it in round dollars or can you give it approximately in dollars and cents?

Mr. Severance: The same objection.

The Witness: No.

By Mr. Dickinson:

Q. You did have experience in the cost of beams, did you not?

A. I did.

Q. In 1897, what would be the reasonable cost to your company for the production of beams per pound?

Mr. Severance: I object to that as not cross examination and as irrelevant.

The Witness: Making an approximation, probably a cent a pound.

Mr. Severance: Is the cost in that case intended to include overhead charges and depreciation?

The Witness: No; that is on the basis of mill cost.

Q. I believe I asked you the cost of production of rails to the Carnegie Company and the Illinois Company in 1897 and 1898, and you said you could not approximate it. Can you approximate the cost at that time of the production of rails by any of the competitors of either of those companies?

Mr. Severance: I enter the same objection.

The Witness: No, sir.

By Mr. Dickinson:

Q. Do you know whether or not the Carnegie Company made a profit in their sale of rails in 1897?

Mr. Severance: I object to that as not cross examination and as irrelevant.

The Witness: I do not.

By Mr. Dickinson:

Q. And in 1898?

Mr. Severance: The same objection.

The Witness: I do not.

By Mr. Dickinson:

Q. And the Illinois Steel?

Mr. Severance: Same objection.

The Witness: I do not.

Mr. Dickinson: You think that is not cross examination?

Mr. Severance: That is what I said.

Mr. Dickinson: I think I will justify it then.

By Mr. Dickinson:

Q. You were asked on page 9310: "How were prices in 1897 and 1898 as compared with any other years in the history of the industry, so far as you know it?

"A. In certain lines, such as rails, they were lower than they had ever been before, and much below the cost of manufacture."

A. My last answer referred to the annual profits. It did not refer to the selling price of a portion of the outputs of those two concerns.

Q. So when you said that in certain lines, such as rails, they were lower than they had ever been before, and much below the cost of manufacture, you did not refer to rails as being below the cost of manufacture; is that correct?

A. Yes; that statement that I made was a perfectly correct one. They were below, and much below the cost of manufacture.

Q. Rails were?

A. Yes.

Q. But you do not know what it cost to manufacture them?

A. Exactly in dollars and cents, no.

Q. You cannot give any idea or any approximation of it?

A. No.

Q. Were you in the employ of the Carnegie Company at that time?

A. I was not.

Q. Or the National Steel Company at that time?

A. I was not.

Q. Or the Illinois Company at that time?

A. I was not.

Q. Were you making any rails at that time?

A. I was not.

Q. Were you selling any rails at that time?

A. I was not.

Q. Were you buying any rails at that time?

A. I was not.

Q. You have just said you never saw the books of either the Illinois or the Carnegie Company during that period?

A. I do.

Q. Do you undertake to say of your own knowledge that you know that in 1897 and 1898 the rails were sold below the cost of manufacture?

A. I do.

Q. On what do you base that statement?

A. On my knowledge.

Q. What knowledge? How did you get it?

A. The knowledge which comes to a man who is in the iron and steel business. Although he may be in allied lines, he knows perfectly well what costs are to produce certain results.

Q. And when did this knowledge come to you?

A. It came to me at that time.

Q. At that period?

A. Yes.

Q. At that period you say that you knew, although you did not know the cost of production, that the Carnegie Company and the Illinois Company were selling rails below the cost of manufacture.

Mr. Severance: I object to that question on the specific ground that it does not correctly state what the witness has said. The witness does not state that he did not know the cost at that time. He said he cannot now state the costs, and I object to it as highly improper for that reason.

By Mr. Dickinson:

Q. Have you ever said that you knew the cost at that time?

A. I have.

Q. During the course of this examination.

A. I think so.

MR. SEVERANCE: It is implied in the answer you read.

By MR. DICKINSON:

Q. Did you have access to the Carnegie books?

A. No.

Q. Or the National?

A. I did not.

Q. Or the Illinois?

A. I did not.

Q. And yet you say that you knew the cost to those several companies at that time for rails?

A. Very closely.

Q. And you cannot give any approximation of it now?

A. At this time, no.

Q. If you did not have access to the books of the company did you know the cost of other products at that time than rails, made by the Carnegie Company and the Illinois and the National?

A. More or less so.

Q. Was there any relation between the cost of these other products and the cost of rails?

A. In some there were and some there were not.

Q. What were they as to which a relationship existed?

A. I do not understand your question.

Q. Well, you said some there were and some were not. If you understood your answer just explain it.

A. The cost of rails is based upon the cost of pig iron. The cost of other finished products would be based upon the cost of pig iron and in some instances on the cost of the blooms or billets.

Q. Are not rails based at all on the cost of ingots?

A. No. The foundation for rails would be pig iron.

Q. How about billets. What is the foundation of billets?

A. The foundation for billets would be pig iron also.

Q. Then they go to a common source, do they, for a foundation?

A. Billets and rails, yes, pig iron.

Q. And is there a relation between them then in that way?

A. No; none whatever. They would be made in an entirely different manner.

Q. They are made in an entirely different manner, but about cost?

A. No; there is no relation.

Q. Certainly the base of cost enters largely into both, if pig iron is the base of each.

A. If you stop right there.

Q. Is that a large part of it?

A. Pig iron?

Q. Yes.

A. Yes; 40 per cent. Something like that.

MR. DICKINSON: That is all.

RE-DIRECT EXAMINATION.

By MR. SEVERANCE:

Q. Mr. Roberts, two or three questions. You said something about certain pools; I think it was the plate pool and structural pool, being a matter of general knowledge, or something to that effect, this morning. Do you recall such a statement, common knowledge?

A. I do.

Q. What did you mean by that?

A. I meant in the trade.

Q. In what trade?

A. In the respective trades, in the materials covered by those pools. For instance, all producers of plate knew of the pools; all purchasers of plates knew of the pools; likewise in the beam pool the purchasers of structural material and the makers of structural material knew of the pool; that is not to say that the wire trade necessarily would know there was a beam pool; I did not know that there was a wire pool.

Q. Mr. Roberts, you said in answer to counsel that the market for the mills of the National Steel Company was in the Central West and in the Pittsburgh district. In which place did they market the greater percentage of their products, in the Central West, so-called, or the Pittsburgh district.

A. The Central West.

Q. Were those mills, so far as you know, large sellers in the Pittsburgh district or otherwise?

A. No. Their material went principally to the tin plate and sheet steel mills located throughout Ohio and that section.

MR. SEVERANCE: That is all.

MR. DICKINSON: Just one question.

RE-CROSS EXAMINATION,

By MR. DICKINSON:

Q. Mr. Roberts, I believe you stated in your cross examination that these pools were spoken of in the trade papers and journals generally, did you not?

MR. SEVERANCE: He did not say "generally."

THE WITNESS: They were spoken of in the trade papers from time to time, yes.

By MR. DICKINSON:

Q. From time to time?

A. Yes.

Q. I suppose that a man in the wire business would shut his eyes when he read about a plate pool, and *vice versa*, would he, and would only read what concerned his own business; is that the idea of your testimony?

A. It depends upon how closely they read the newspapers, of course?

Q. Well, a man that was generally informed would know something about all of them, wouldn't he, although it might not be his particular pool?

A. Not necessarily.

Q. Not necessarily?

A. No.

MR. DICKINSON: That will do.

(Whereupon an adjournment was taken until Monday June 9, 1913, at 10:30 o'clock a. m.)

SEVENTY-SECOND DAY.

EMPIRE BUILDING,
71 Broadway, New York City,

Monday, June 9, 1913.

Before SPECIAL EXAMINER JOHN ARTHUR BROWN.

Present on behalf of the United States, MR. DICKINSON and MR. COLTON.

Present on behalf of the Defendants, MR. LINDABURY, MR. SEVERANCE, MR. BOLLING and MR. REED.

ELBERT H. GARY,

a witness previously sworn on behalf of the Defendants, was recalled for further examination.

DIRECT EXAMINATION (Continued),

By MR. LINDABURY:

Q. In your testimony on the 2nd of June you referred to an agreement, a memorandum of which was made and signed by Mr. Carnegie, Mr. Frick and Mr. Porter, some time between 1898 and 1901, and you stated that that paper was retained by you, that you placed it in your desk and that you supposed it was there until some time since this suit was commenced; that you thought it was there until two or three months ago; that you kept the desk locked; no one else had access to it so far as you know; and then you stated who had been in that desk by stealth you do not know; that if any one had the paper you thought it ought to be produced, that you cannot find it, you are sorry to say, but you know very well the substance of it.

I desire to ask you whether or not by that statement you intended to imply that this paper was now in the possession of counsel for the Government or of any one connected with or representing the Government in this suit, or that it had ever been in the possession of these gentlemen or any of them.

A. No, sir.

Q. You did not mean to imply that?
A. No.

MR. DICKINSON: Or the control?
THE WITNESS: No.

By MR. LINDABURY:
Q. Or that it was under their control?
A. No.
Q. Or that they had any knowledge of it?
A. No, sir.

MR. LINDABURY: You may cross-examine.

CROSS EXAMINATION

By MR. DICKINSON:

Q. In your direct examination, at page 8888 of the typewritten testimony, referring to the methods that had been in vogue in the matter of the control of the subordinate companies, the question was asked you:

"Q. Were you in those days kept in pretty close touch with the general business of the subsidiaries?"

and you answered:

"A. I was, necessarily. I have always been, necessarily. In later years not so much in regard to what I would call the smaller details of operation, and certainly not with reference to the details of manufacturing, but in a general way of course I was, because all of the important things involve the expenditure of money or the determination of a policy, and those come from the president directly to me."

Now, when you say there that in later years you were not necessarily in close touch, please indicate what you mean, what period you mean to embrace by the term "later years."

A. I simply mean to say that for the last five or six years I have not visited the mills and have not known as much about the operation of the mills and the things that were going on at the mills as I had before that time; and I perhaps should add, in justice to you, that I did not claim to have ever been fully acquainted with the details of operation at the mills.

Q. But I understand then that by the term "later years"

in that connection you refer to the last five or six years?

A. Yes; not to be exactly definite as to the time. The range of my duties and responsibilities which have devolved upon me have been increased, and therefore my time has been more devoted to questions of policy. I will go back farther than that, if you want to be definite, if it is important to you to state the time.

Q. I only wanted to know what period you meant to embrace by the answer "later years," because it is a vague term in itself.

A. Will you let me answer it in this way? My duties and responsibilities have been substantially the same as they are now about six years. Before that, for a period of three years, they were not quite so great; prior to that time, from the beginning of the Corporation, they were still less.

Now, as my duties and responsibilities have widened, I have been less familiar with details. That is about as definite as I can remember.

Q. How about questions of policy, and the question of policy of sales and the attitude towards competitors? Has there been any change within that period as to your knowledge on this subject, and if so, within what periods would there be a difference?

A. I should say there has been a difference between the period commencing say eight or nine years ago and prior to that time.

Q. That is to say, take the last nine years, there has been a difference between those years and what prevailed before that?

A. Yes, the first three or four years; three years, I should say, after we were organized I did not devote as much time or know as much about the sales, the selling department, or have as much to do with the policy of the corporation as I have had since.

Q. Well, then, take the period after the first three years after the formation of the corporation; have you kept in close touch with the policies of the constituent companies in the matter of sales, so far as it would affect their competitors, or not?

A. I should say that I have tried to do so. I think I have known more and more about them as time passed.

Q. Well, now, state, Judge, whether or not during the whole time since the formation of the Corporation there has been a very large latitude left to the constituent companies themselves in determining the question of policy in respect of sales as it affected their competitors?

A. That is, from the beginning?

Q. Yes, from the beginning, or if there has been any change at any period, you can indicate what the change was and the period when such change began.

A. Well, I am unable to say the exact date, Judge, but I will say that there has been a change since the beginning; and I will say also that the policies of selling were not so carefully enforced by the Steel Corporation during the first three or four years as they have been since.

Q. The question is how far these subordinate companies, since the formation of the Corporation, were allowed latitude in determining the question of policy in respect of sales as affecting their competitors, and if there has been any difference in respect of that during any period, if you would define the differences and the periods in which they prevailed.

A. I probably cannot intelligently answer your question except by giving you the exact facts in regard to any particular thing, or in regard to any particular policy, or with respect to any particular date. You know, because I have stated, that during the earlier years of the Corporation the disposition of some of the managers of subordinate companies and possibly some of the officials of the Steel Corporation was to manage the affairs of subsidiary companies without always being certain that they were managed in accordance with the desires and expressed policies of the Steel Corporation. When I suggest to you how different were the notions of different people at the beginning of the organization, and how much difficulty we had in harmonizing all these views and methods and manners and desires, you can readily understand, I think, what I mean. I am perfectly willing and will, to the best of my ability, take any particular time or any particular subject and give you the exact facts as I understand them.

Q. So far as you know, did any of those activities take the form towards the competitors of unfair competition in any respect, and if so, state what concrete cases you have in mind.

A. No; I do not remember any; but if you have anything in mind and I know it, I will tell you.

Q. Now, you stated on page 8885 of your testimony, referring to that character of differences, as follows:

"In the earlier years we did not always find out exactly what was being done, but that is a thing of the long past."

Now, will you define with some more definitiveness what you mean there by earlier years, when you say, "It is a thing of the long past." What period, now, would you cover?

A. At that time I had in mind the first three or four years after the organization.

Q. That would bring it down to 1904, somewhere along there.

A. I would not fix the exact date, Judge, because I cannot.

Q. But there was a period which you do not fix exactly, where you say there was a change.

A. Judge, I would find out these things in this way, for instance: I would hear some of our officials of the Steel Corporation propose certain things in their treatment of others, and when I would hear of those things I would say, "No; that would not be our policy"——

Q. What sort of things?

A. Well, in earlier years I have heard some of our officials say, "There is only one way of doing business, and that is to drive that man out. We can manufacture cheaper than he. We can sell at a lower price than he, and we have an advantage of him, and there is only one way of carrying on this business, and that is to sell at a price that forces him out of business."

Now, that is a thing I never approved of and always disapproved of, and our company did as a company. That is what I had in mind, and——

Q. Now, the things that you have in mind which you have just described, occurred during what period, giving the year?

A. Those were the very earliest years of our organization.

Q. Was it a fact that you could manufacture cheaper then than your competitors?

A. At the beginning?

Q. Yes.

A. I presume cheaper than some of them, yes, of course we could.

Q. And was it a fact as stated by them that you could, on account of that fact, put some of them out of business?

A. I think we could at the start, Judge; I have no doubt we could; and not only we could have done that, but many others could have done it. For instance, Judge, in my opinion I believe Jones & Laughlin at the time this Company was organized, could have driven the Republic Iron & Steel Company out of business. Those conditions have changed, of course, but I only mean to say that a stronger, better equipped company, which has a decided advantage over a very weak company, can, if it is willing to do so, drive the smaller one out of business, just as I believe they used to do in olden times.

Q. Well, the Corporation had been formed, had it not, with a view to economy of production; that was one of the purposes you had, as you described?

A. Yes.

Q. For a period following your organization were you able to produce the various products that were produced by the constituents of the Corporation at a less price than your competitors?

A. Certainly at less price than most of them, and probably at less price than any of them; that is, to the extent that our Corporation was better equipped, better organized, possessed better facilities and better opportunities of extending its business, generally, increasing its foreign trade and delivering its raw products to its finishing mills, and delivering its finished products to selling points, in the same proportion I think it could manufacture at lower cost.

Q. Judge Gary, where you referred to these earlier years and the period at which that different policy began to be effective, state the time when such policy was really effective.

A. Judge Dickinson, I cannot fix a definite time. These

things are a growth, like everything else; conditions grow better, improve from time to time, some days, some years, in one place and some in another, gradual, steady growth and change. I would be more specific if I could.

Q. You know, of course, Judge Gary——

A. (Interposing) Judge, may I add to that answer?

Q. Yes.

A. If you will ask me with reference to any specific thing and I can fix the date or about the date of it I will be glad to do so.

Q. In the formation of the Steel Corporation did you not take into the constituent properties as large a percentage of the foreign business then being done as you took of the domestic business being done in proportion to the other foreign business that was left out and the other domestic business that was left out?

A. I cannot answer that question offhand.

Q. You did, however, form it with a view, you say, of increasing foreign business?

A. I certainly did.

Q. You took over companies, then, that were doing foreign business, did you not?

A. Yes, sir.

Q. But you cannot give the proportion?

A. No.

Q. You were acquainted, Judge, were you not, with the fact that Congress on January 28, 1905, passed a resolution as follows:

"RESOLVED, That the Secretary of Commerce and Labor be, and he is hereby directed to investigate the conditions of the iron and steel industry of the United States for the purpose of ascertaining the following facts: Is the United States Steel Corporation and its associated and constituent companies engaged in commerce between the States and Territories or with foreign countries? And if so engaged, to what extent the iron and steel industries in the United States, including the output and prices of its products, are controlled by said corporation and its associated and constituent companies. To what extent said corporation and its associates

control the output and prices of the finished products made by independent companies dependent upon it for their raw material. To what extent, if at all, does said company or its associates sell its products cheaper to its export trade than it does to its domestic customers.

And whether said conditions have resulted in whole or in part from any contract, combination, or agreement in the nature of a trust or conspiracy in restraint of commerce between the States and Territories or with foreign countries, and that he report his findings according to law."

A. If I did, I have forgotten it. I know of no investigation having been made pursuant to that resolution.

Q. You state that you have no knowledge of such a resolution having been passed?

A. I say I have no knowledge of it.

Q. And if you ever had any knowledge of it, it has passed out of your mind?

A. Yes.

MR. LINDABURY: I would like to have that question repeated.

(The stenographer repeated the question.)

MR. LINDABURY: I would like to know if the Judge has in mind who was to make the investigation.

THE WITNESS: The investigation that was made, so far as I know and believe, was not made under that resolution at all. I think it has been testified here, and I believe I have testified, how the investigation was commenced. It was by the Department of Commerce, but as I said, under the direction of the President, and my interview was with the President and Mr. Metcalf, the Secretary of Commerce, and Mr. Garfield, the Commissioner of Corporations, but so far as I know, that had no relation to any resolution passed by Congress. I have not the slightest recollection of having heard of it at all. I do not deny that I may have seen in the newspapers something about this resolution, but I have no recollection whatever in regard to it.

By MR. DICKINSON:

Q. When did the investigation that you know of first begin?

A. I should think it was in 1905 or 1906.

Q. Shortly after the date that is attributed to this?

A. Some time after that, I should think.

Q. Judge, you stated on pages 8857 and 8858, Volume 66:

"I am justified in saying that we have fostered competition."

And further on, on page 8889:

"These policies"—referring to those of the Corporation—"have tended to develop trade, to extend trade, to increase trade, to foster competition, to prevent monopoly, to prevent wrong and imposition of any kind. I want to say with emphasis, because it seems to me it is involved in this case and we are called upon to say it as a matter of fact, that the policy of this Corporation has been to so manage and conduct its affairs as to make it certain it did no wrong or injury to any person or any other interest."

Now, what period of time did you mean to embrace by that statement as to its policy?

A. Well, I say that was its policy from the start.

Q. Do you recall now any acts done by any of the subsidiary corporations either with or without the knowledge at the time of the higher officers of the Steel Corporation, whose tendencies were not to foster competition and whose tendencies were not to be fair to competitors?

A. I do not, Judge, but if you will call my attention to any particular thing, or refer to any act or neglect to act that you believe had that tendency, I will tell you frankly just what I know and have heard about it.

Q. Well, of course, the question of fostering competition, and in fact all of these general statements, may involve some difference of opinion and judgment as to what, in fact, might be preventing monopoly or fostering competition. Now, taken in connection with your testimony and your use of those terms, I would like to ask you whether you would regard that it was fostering competition for any of the large constituents of the United States Steel Corporation to buy up pig iron with a view to sustain the market and thereby keep up prices of semi-finished products; if such a thing were done, would you call that fostering competition?

A. Well, I should say it might perhaps depend upon circumstances; that perhaps could be done at a time and under circumstances and that would be fostering competition.

I have in mind indistinctly the suggestion made in earlier years by some one to buy some pig iron, simply because it would be beneficial to the market, and I opposed it, and I am very sure, giving you my best recollection and judgment, I never approved the purchase of pig iron for the purpose of sustaining the market. If you will call my attention to particular instances and facts I will try to answer.

Q. I will refer to them, and you can correct me if I am wrong; and ask if your judgment on that matter was controlled by the idea that that would be an unfair exertion of power and influence.

A. I say, depending upon circumstances.

Q. You spoke of having opposed it. Was that the ground of opposition that influenced you?

A. I think at that time I saw no good ground for doing it, no ground I considered fair and reasonable, no extreme circumstances that would justify it.

Q. Did you consider that there was any fundamental objection to it from the standpoint of the policy of the company, to which you have referred, as to fostering competition, etc.?

A. I would think, of course you are now asking my opinion concerning an abstract proposition, but I would say that I believe under normal conditions the purchase by the Steel Corporation of a substantial and influential quantity of pig iron simply for the purpose of sustaining the market would not be justified.

Q. Well, what would you call, as to any period prior, say, to 1905, a substantial amount or purchase?

A. Prior to 1905?

Q. Yes.

A. Oh, well, two or three hundred thousand tons, for instance.

Q. Would you call less than that a substantial amount?

A. Well, the production of pig iron is and was at that time so large in this country that a smaller purchase than that I would not think would have any effect, and I do not believe

that would have very much. Of course we bought pig iron in those days. We had to buy pig iron; I am not giving the exact period.

Q. I am not speaking now of what you bought for necessities, but I am putting now what may be a supposititious case. Suppose that the amount embraced all of the pig iron then being offered on the market, or all that would be for some appreciable time.

A. Well, up to what quantity, for instance?

Q. I mean all the quantity that was being offered, large or small.

A. I would answer that question, stated in that language, in the negative.

Q. You would answer in the negative?

A. Yes.

Q. What, in the negative?

A. It might be a very small quantity. You do not give me the quantity. Now, the productive capacity of pig iron was very large, and for instance at any given time—in 1905, do you ask me?

Q. Prior to 1905.

A. In 1904?

Q. Any year embracing 1905 and prior thereto.

A. There is quite a difference in years. Say in 1904, there might be offered fifty or a hundred thousand tons of pig iron only, and I do not believe that the purchase of that pig iron would have any appreciable effect on the steel market, because the productive capacity was so large. I have heard these theories, that if you cleared the market of pig iron in 1907—I remember to have heard from some of the pig iron producers that it would protect the situation if the steel makers would purchase the surplus of pig iron, but I never believed in it and never acted upon it, and we did not buy any.

Q. How about 1903; was there as much produced then as there was in 1904?

A. I think there was, pretty nearly. The market conditions were very much better in 1903 than they were in 1904. That was a presidential year.

Q. What do you mean by market conditions?

A. General financial conditions. There was a depression in 1904—that was a presidential year, as I remember—particularly the latter part of the year.

Q. What about the year 1903, what would you say about the market conditions then?

A. The market conditions went off, that is, became depressed, I should say perhaps the middle of 1903, or even a little later than that. The earlier part of 1903 I think conditions were very good. Of course all these questions are susceptible of proof by reports that cannot be questioned.

Q. Was the demand for pig iron greater in the early part of 1903 than it was for the latter part?

A. That is my impression; I think so.

Q. Well, then, buying the visible supply of pig iron at that period would have a greater effect at that time than when there was not so much demand for it? Where the market is good the demand is greater always for pig iron?

A. Yes.

Q. Where it is good for steel and iron products?

A. Yes.

Q. Under those conditions if the visible supply should be bought up it would have a greater effect than it would if it were bought up at a time when there was not so much demand, would it not?

A. I would not think so.

Q. You say you wouldn't think so?

A. Yes, sir.

Q. Judge Gary, state whether in January, 1902, you were a director or officer of the National Tube Company?

A. Yes.

Q. What were you? I said director or officer; were you both?

A. Director.

Q. How long have you been a director?

A. I cannot say. I was nominally a director of most of the subsidiary companies I think from the start.

Q. Do you know, at that time, of any plans entertained by the officers or directors or any of them, of the National Tube Company to dominate the trade situation in the products they were selling?

A. No, I cannot say that I do.

Q. What would you have understood at that time by the term dominate the trade situation?

A. Well, I would understand that probably to be a very loose and a very careless and a very foolish statement of some official, if it was made.

Q. You would regard it as careless, would you?

A. Well, by that I mean a statement without consideration of what it really meant.

Q. What would you understand it to really mean?

A. I would probably have the same understanding of the word dominate that you have, Judge.

Q. That is to control, would you?

A. Very influential, to say the least. I would consider a dominant factor a very influential factor, but not absolutely a controlling factor. I do not want to split hairs on the definition with you, of course.

Q. You knew Mr. Latshaw, did you?

A. Who?

Q. Mr. Latshaw.

A. I do not remember the name.

Q. Was he an officer of the National Tube Company at that time?

A. I do not remember the name at all.

Q. Do you not recall he was second vice-president of the National Tube Company?

A. I do not remember the name at all, Judge.

Q. You do not?

A. No.

Q. I read from the minutes of the National Tube Company, Government Exhibits, Volume II, pages 417 and 418, of January 21st, 1902:

"Upon the calling of the roll the following"——

A. Where was the meeting held, Judge? Does it state?

Q. This extract does not show, but I will read it as it appears here:

"Upon the calling of the roll the following named Directors were found to be present, viz:

"John D. Culbertson,

"Wm. B. Schiller,
"E. C. Converse,
"Wm. H. Latshaw,
"E. H. Gary,
"A. S. Matheson,
"F. J. Hearne,
"Charles Steele."

Now, how many of those names do you recall?

A. I remember all of them except Latshaw; I do not remember him at all. I doubt if he remained with the company very long.

Q. Mr. Steele was one of the firm of J. P. Morgan & Company, was he not?

A. Yes, he had been a director before the U. S. Steel Corporation was organized, I think.

Q. Well, J. P. Morgan & Company were interested in the National Tube Company, were they not, before the organization of the United States Steel Corporation?

A. I think they financed it, but I do not know much about that and never did.

Q. It goes on: "being a majority of the board and a quorum.

"The First Vice-President, Mr. Schiller, reported that the mills were all running to their full capacity, with the exception of the Oil City Department, where there was a partial shut down because of a shortage of gas, which it was hoped would be only temporary.

"The amount of stocks on hand had been increased to about 55,000 tons, about twice that reported at the December meeting, but that orders coming in represented nearly the full producing capacity of the company and indicated that there would be very little increase in the present stocks on hand.

"The Second Vice-President, Mr. Latshaw, reported that the business outlook was very good; that the tonnage being booked was due to notification to the jobbers that in case prices were reduced during January the company would settle with them on the lowest basis, in conformity with the sales policy just inaugurated to meet the advances of competitors

and as a notification of the intention of this company to dominate the trade situation."

Do you recall that, Judge Gary?

A. I do not. Is there any record of what I said?

Q. That is all there is here in the record of that meeting.

A. Of course I was not quite as active or quite as willing to assert myself in those days as I was a little later, or some years later, but I have no recollection whatever of that.

Q. What position then did you hold with the Steel Corporation; chairman of the——

A. Chairman of the executive committee.

Q. Do you know what the sales policy was that had just been inaugurated, therein referred to?

A. I do not.

MR. LINDABURY: You have just stated, Judge.

MR. COLTON: It is not very fully stated there.

MR. LINDABURY: Is it not?

THE WITNESS: Except as stated in that.

MR. DICKINSON: It says "to meet the advances of competitors and as a notification."

MR. LINDABURY: They would meet prices, whatever they were.

MR. DICKINSON: I am asking him if he knows anything in addition to what is there stated.

MR. LINDABURY: Would you mind if I showed this to the Judge?

MR. DICKINSON: No.

THE WITNESS: My answer still is: I do not.

MR. LINDABURY: That is the extract referred to. (Handing book of exhibits to the witness.)

THE WITNESS: I think that word "advances" probably is a mistake in writing the record, or somewhere. I think that should be "reductions."

By MR. DICKINSON:

Q. It may mean advances on your business.

A. Well, I do not think so, Judge.

Q. Well, we do not know about that, and of course we cannot change the minutes, but——

A. I do not think that would make sense.

MR. LINDABURY: It might be an error in the printing.

MR. COLTON: It was checked over pretty carefully. Of course we might send for the original minutes.

THE WITNESS: I should think that was probably a mistake in making up the minutes.

MR. LINDABURY: They would not make advances.

MR. COLTON: Unless it was advances on business.

MR. DICKINSON: If it is incorrect we can correct it.

MR. COLTON: Suppose we send for the book.

MR. LINDABURY: Yes.

THE WITNESS: Probably the mistake was made by the young man who wrote up the record, whoever it was.

By MR. DICKINSON:

Q. Do you remember who he was?

A. No; but there was a clerk there, I believe, in those earlier days.

Q. But you do not recollect who he was?

A. No.

Q. You do not recall whether he was a young man or an old man?

A. A young man, as I remember. I remember in the earlier meetings of the National Tube Company they had a young man whose name I do not know, if I ever knew it, who made minutes of the meetings.

That is as much as I can say.

Q. Do you remember that distinctly?

A. You ask me if I remember distinctly? I have an impression.

Q. Enough to speak of it with positiveness?

A. What is that?

Q. Enough to state it as a recollection, I say?

A. Well, that is my impression.

Q. But you have no recollection of Mr. Latshaw, the vice-president?

A. No. Undoubtedly from that he was connected with the company and a vice-president of the company, but I should

not say he remained very long, and at any rate I have no recollection whatever of that name.

Q. What departure, if any, in the selling plans of the company was adopted about February 18, 1902?

A. I do not know.

Q. If any was adopted, can you speak in a general way, whether it had any effect on competition and on the competitors of the company?

A. No; that would be theoretical. I could not answer that.

Q. You have no recollection either as to the plan or its details, or as to the effect of the plan, if there was one?

A. No; I am very sure in those days if the Tube Company adopted any special plan for the selling department, it did not come before the Steel Corporation for consideration.

Q. Now, I will ask you—I call your attention, Judge, to the minutes of the next meeting of February 18th, 1902. In the extract here, it is not shown who were present. The original minutes would show, however.

MR. LINDABURY: Shall I give it to him, Judge?

MR. DICKINSON: I do not object to his looking at it.

By MR. DICKINSON:

Q. Page 418:

"The Second Vice-President, Mr. Latshaw, reported that sales for January, 1902, were 42,744 tons as against January, 1901, 41,291 tons, and January, 1900, 34,921 tons.

"Sales for the first eleven days of February, 1902, were 19,301 tons as against February, 1901, 13,433 tons; February, 1900, 16,025 tons.

"Mr. Latshaw reported that the demand had started in about four weeks earlier than usual, but that this could be attributed to the operation of the new selling plan, which was progressing satisfactorily in that the trade seemed satisfied, and that it had temporarily defeated competition."

Do you know what that selling plan that Mr. Latshaw there referred to was?

A. I do not. Mr. Latshaw I should think by this must have been manager of sales.

Q. Then you do not know whether it had temporarily defeated competition or not?

A. I do not.

Q. Now I will read from the same volume,——

A. I should like to have you, if you can, show me a statement of that kind made after, say about 1903, when I was present, without being denounced by me.

Q. You say you will denounce me for showing it to you?

A. No, I did not say that.

Q. That is the way you put it. You would like me to show it to you without being denounced. I suppose you meant by that, Judge, that if there were any statement of that sort in the minutes about you that you would say it was incorrect?

A. No.

Mr. Lindabury: I would like to have the stenographer read that answer that the Judge made.

(The stenographer thereupon read the answer as follows:)

"A. I should like to have you, if you can, show me a statement of that kind made after, say about 1903, when I was present, without being denounced by me."

By Mr. Dickinson:

Q. You mean denouncing the statement at the time in the minutes?

A. That is what I meant to say.

Q. I think I catch it.

A. May I just say a word?

Q. Yes.

A. In the earlier years there were notions in the minds of many of our subordinates concerning the permissible way of doing business, which led them to make statements or to express themselves from time to time in my presence as to what they would do or believed in doing, and as I began to get into harness, so to speak, I endeavored to correct and change those notions, and when anything was suggested that did not seem to me to be fair and right and decent I opposed it, and so far as I could influenced a different attitude, and the finance committee sustained me in that position until we came to a point where I think I can say honestly we did not allow any

of our people to intentionally do anything that was contrary to the policies which I have testified to here.

Q. Well, now, you cannot state anything, however, about this plan which Mr. Latshaw said had defeated competition. You do not know what that was?

A. No; of course I could place my own interpretation upon his words.

Q. I am not asking you for an interpretation. I am asking you if you can state what that selling plan was?

A. No, because I do not remember, if I knew.

Q. Now, I will read you from the minutes of March 18, 1902, same page:

"Mr. Latshaw, the second vice-president, reported that sales for January, February, and the first 14 days of March this year were 145,000 tons as against 119,000 tons for the same period of last year. Mr. Latshaw stated that the new selling plan was working so well that the necessity for cutting prices to meet competition had been very largely removed, and there would be a very slight differential, if any, for March."

Can you give any further information on actual recollection in regard to any selling plan, in addition to what you have stated?

A. I cannot.

Q. Now, I will read you, Judge, from December 16th, 1902, page 420, the same volume:

"Mr. Latshaw reported as follows: That tonnage of orders coming in is extremely satisfactory. We are hearing very little from outside competition and think we will hear still less after their stocks have been exhausted."

Do you know, and can you recall and state the condition as to outside competition at that time?

A. No, sir.

Q. What effect would it have on competition for any large concern such as the United States Steel Corporation to tie up large consumers over long periods of time under contracts under which they took all or approximately all of their products from the United States Steel Corporation?

A. I do not know that I could answer that question.

Q. Do you carry in your mind any knowledge of such contracts?

A. No, I do not have in mind any.

Q. I will call your attention, by way of asking you whether or not it refreshes your recollection and asking whether or not you can give any statement in regard to the facts, to Government Exhibits, Volume II, page 506, a meeting of the Carnegie Steel Company. Were you a director of that company October 30, 1905?

A. I was nominally a director.

Q. You were a director?

A. Nominally.

Q. Did you have the same power as any other director?

A. Oh, yes.

Q. You had a right to attend the meetings?

A. Yes.

Q. And had the right to vote?

A. Yes. I did not mean that I did not have any power. I probably had more power, really, than any of the rest of them, but I did not attend their meetings; their meetings were held in Pittsburgh. I did not attend the meetings, any of them.

Q. You had a right to examine their minutes?

A. Yes. I wish I had exercised it more.

Q. I will read you from those minutes:

"MR. BOPE: We have 122,000 tons of rails outstanding on contracts, in addition to those included in the report.

"On the general situation there is not much new to be said. It is just as strong as it has been at any time. The only item of interest is that we closed with the Standard Steel Car Company during the week for all their requirements for ten years. It might seem that we could have been reasonably sure of their tonnage from year to year; but with our enormous capacity and the contemplated additions to it, it seems to me the thing to do is to get as much 'back-log' tonnage as possible. In going over our books, it is apparent that we have obtained the cream of the tonnage placed in the country during the past year, in heavy axles, plates, shapes and bars. We have picked our business, taking only the most desirable, and, even if we did not always get the highest prices, our 'back-

log' tonange, and the ability to turn out an enormous production, have been better than to get top prices by taking more undesirable work. With the exception of the American Car & Foundry Company, we have the best buyers tied up, and even in bad times we should be able to run our works fairly full."

Now, Judge, what was the Standard Steel Car Company at that time?

A. A manufacturer of steel cars.

Q. Did they use a large amount of steel?

A. I think they used considerable.

Q. Do you know, since your attention has been called to it, or recall the fact that there was a contract for ten years with the Standard Steel Car Company by which they were to take all their requirements from the Carnegie Company?

A. I do not.

Q. Did you know it at the time?

A. I don't think so

Q. How about their having the best buyers tied up? Did you know that at the time?

A. No; I think Mr. Bope was blowing his own horn a little there.

Q. Do you think that Mr. Bope was misrepresenting the facts to the other directors?

A. I think Mr. Bope was dealing somewhat in exaggeration when he said he had picked his business, taking only the most desirable, and that he had obtained the cream of the tonnage placed in the country during the past year.

Q. But, Judge, I am asking you about when he said they had the best buyers tied up. Do you know what contracts they had with the best buyers?

A. No, I do not.

Q. Are you in a position, then, to express an opinion as to whether Mr. Bope was stating the facts when he said that?

A. Probably I ought to answer that question in the negative.

Q. On the next page, I will call your attention to the meeting of November 13, 1905, at which Mr. Bope says:

"As a matter of policy, Mr. Corey has told the American Car & Foundry Company that we do not care for their eastern

business. Their western trade is ours legitimately, but the eastern business we are satisfied to give to Lackawanna and Jones & Laughlins. I think this is a wise move, as we have the Pressed and Standard Companies tied up for their entire requirements. To take all this tonnage from our large competitors would simply mean that they would encourage new car works, and I do not think it would be wise for us to take a stand that would bring this about."

Now, do you know what contract they had with the Pressed Car Company?

A. No, sir; I do not. I know they sold to the Pressed Steel.

Q. But you do not know the period of the contract, or whether it took all their requirements or not?

A. No, sir; I do not.

MR. LINDABURY: That is in evidence.

MR. DICKINSON: I am just asking what the Judge knows.

THE WITNESS: I do not remember.

MR. LINDABURY: I did not mean to inform him.

By MR. DICKINSON:

Q. Do you know what the National Transit Company was and what concern it was a subsidiary of?

A. I do not recall at this time. Wasn't that connected with the Standard Oil people?

Q. I am asking for what you know about it. Do you know what contract, if any, the Carnegie Company had with the National Transit Company?

A. No.

Q. Or how much output it embraced?

A. No; I do not remember, if I did know.

Q. Do you know anything about whether there was such a contract?

A. I do not remember anything about it. If I knew, I do not remember.

Q. That is what I understand. The Standard Oil Company was a large consumer of pipes, was it not?

A. Yes; directly or through subsidiary companies.

Q. One of the largest in the country, wasn't it?

A. I think so.

Q. How about the American Can Company; do you know of any contract that existed between the American Can Company and the American Sheet & Tin Plate Company, extending over a long period of time, by which 99 per cent of the requirements of the American Can Company was to be bought from the American Sheet & Tin Plate Company?

A. I do not; I do not remember such a contract, and if I did know it, I do not remember it. I knew, of course, that the American Can Company was a very large purchaser from the American Sheet & Tin Plate Company.

Q. Do you know anything about a contract extending over a long period of time between the Carnegie Company and the Pittsburgh Steel Company by which for that period of time the Pittsburgh Steel Company was to take the whole of its requirements from the Carnegie Company?

A. The same answer.

Q. Do you know anything about a contract between the American Steel Foundries Company on the one part and the Carnegie and Illinois Company on the other, a long term contract?

A. I remember something about the subject matter. I remember the president of the Steel Foundries Company speaking to me about making a contract for the purchase of steel from some of our companies, and I turned him over to some one, some sales manager, I should think, and I think the president told me afterwards he had made a satisfactory arrangement.

Q. But you do not know the terms of it?

A. I do not know the terms of it and never did, so far as I remember.

Q. Do you remember a contract between the Oliver Iron & Steel Company and the Carnegie Company by which the Oliver Iron & Steel Company was to take its entire requirements from the Carnegie Company, extending over a period of years?

A. I do not.

Q. Do you know anything about a contract between the Crucible Steel Company for a long period of years by which all of its requirements were to be taken from any of the subsidiaries of the Steel Corporation?

A. I do not.

Q. Do you now know of any contracts between any of the companies named and any of the subsidiaries of the United States Steel Corporation which were either long term contracts or contracts requiring either a large proportion or all of the requirements to be taken by the purchasing company?

A. I do not. If I have ever known, I have forgotten. That is what I have intended to answer you to all these questions.

Q. Yes; I have understood it that way, and that is the reason I made this broad question. Judge, what knowledge have you as to contracts made with the jobbers by certain of the subsidiaries of the United States Steel Corporation whereby the jobbers received a rebate only in case they purchased a very large percentage of their entire supplies from the Steel Corporation; and also what knowledge have you of percentage contracts with purchasers, such as the American Locomotive Company, whereby said purchasers were to take a large percentage, such as 75 per cent, from the subsidiaries of the United States Steel Corporation?

A. Not any.

Q. Judge Gary, do you have any knowledge or information in regard to a contract that was being considered on April 29th, 1901, between any of the subsidiaries of the United States Steel Corporation and the Standard Oil people and any question that arose as to the matter of influencing them to purchase supplies from the subsidiaries of the United States Steel Corporation?

Mr. Lindabury: Couldn't you make that more definite by mentioning the subsidiary? "Any subsidiary of the United States Steel Corporation" is rather vague.

Mr. Dickinson: I will read just what it is here, and see if that makes it more definite.

Mr. Lindabury: What page?

Mr. Dickinson: Pages 561 and 562, Volume II, Government Exhibits, April 29th, 1901.

By Mr. Dickinson:

Q. You were the chairman then, were you not?

A. Chairman of the executive committee.

Q. Was there any other chairman at that time?

A. Chairman of the finance committee.

Q. If you look at page 561, do you see there about the middle of the page, it speaks of "The chairman favored selling a limited supply of Mesabi ore." Was the chairman there referred to you?

A. I think so.

Q. Now, then, on the next page, at the same meeting, is the following:

"Purchases made by the Standard Oil Company. There was some discussion as to ways and means to influence the Standard Oil people in the matter of purchasing its supplies from our companies. The president of this company was authorized to take up the question."

Do you know which of your companies were referred to there?

A. I do not.

Q. Where it said, "supplies from our companies"?

A. I do not. That is evidently a statement by the young man who attempted to take down the substance of the discussions as to what had been said. Presumably, it was suggested that some of the Standard Oil people were not buying some of their supplies of some of our subsidiary companies and it was suggested that the president take up with some of the Standard Oil people the question of seeing if the Standard Oil people could not be induced to buy of some of our companies.

Q. Judge, you spoke about a young man taking it down?

A. Yes.

Q. You also in your direct examination made some reference to a young man taking down what occurred at the meetings of the Executive Committee?

A. Yes.

Q. Who was he?

A. I think a Mr. Murray.

Q. Was he your private secretary?

A. He acted as my private secretary for a short time and may have been acting in that capacity then. He was younger then than he is now, of course. He could write shorthand a

little, not very well, and I remember he was a man I treated as a man of good ability, and who would grow into a responsible man, and I think it was my own suggestion having him present at the meetings.

Q. Now, he is secretary of your company?

A. No, he is an assistant in the treasurer's office; a very good man.

Q. He has been with your company ever since?

A. Yes, a very good man.

Q. You thought he was good enough for the purpose for which you were using him, did you?

A. Well, yes. It was more to keep a record of the topics referred to, I think.

Q. Well, you accepted his work?

A. Yes, I accepted his work; not in the sense of reading it and correcting it.

Q. How is that?

A. Not in the sense of reading it.

Q. You had a chance to do it?

A. Yes.

Q. Are you impeaching the veracity of his statements, what he put down?

A. No, excepting in this way: The statement by one person of the substance of what another person says very frequently is inaccurate and does not correctly represent the one who has spoken. I need not enlarge upon that; we all understand that, and I think when he uses the term, for instance, "discussion as to ways and means to influence the Standard Oil people," I do not think that correctly represents what anyone said there.

Q. Have you any recollection of what was said about the ways and means?

A. No, I have not.

Q. Then, have you any better memory of it than his record of it?

A. Well, I do not think his record is a memory. That is a record of his way of stating what some one else said.

Q. When it was fresh in his mind?

A. Oh, yes.

Q. Do you have in mind any particular errors that you know he made; if so, just state them.

A. I do not.

Q. You do not?

A. I do not mean to say that. I only state what seems to me, from the statement itself and from my knowledge of the people, that that would not probably be used; that is all.

Q. But as to this particular event, you cannot recall what was said by anybody?

A. I have not the slightest recollection in regard to it.

Q. No recollection about it?

A. No, sir.

Q. I call your attention to the minutes of the Carnegie Steel Company, Volume II, page 464, which is of April 30, 1901—the other date was April 29, 1901, just a day's difference, in which, referring to the contract with the National Transit Company, Mr. Bope, among other things, referring to Mr. Arnold, who represented the National Transit Company, says "He thinks the price should be 1.35c. for the groove skelp, and 1.40c. for the wider sizes. Personally, I think these prices are too low, but knowing the connection of the Standard Oil Company with the new organization, and that it is the wish of President Schwab that these people be properly treated, I think, perhaps, some concession should be made to Mr. Arnold. I should like to have the views of the Board on the subject.

"Some discussion ensued, and the Board agreeing that possibly some concession should be made, it was decided to give Mr. Arnold a minimum of 1.50c. per pound, which it was believed would be a satisfactory basis."

Do you know whether that was done?

A. No, I do not.

Q. Do you know whether it refers to the same transaction?

A. I don't know that, no.

(Whereupon a recess was taken until two o'clock p. m.)

AFTER RECESS.

ELBERT H. GARY,

the witness under examination at the taking of recess, resumed the stand for further examination.

CROSS-EXAMINATION (Continued),

By Mr. Dickinson:

Q. How would it affect the question of fostering competition or conducting competition in a fair way if one of the constituents of the United States Steel Corporation should load up a competitor of another constituent of the United States Steel Corporation with high priced material; then, if there be a cut in the price of finished material following that?

A. That is, if one of our subsidiaries should sell material to a manufacturer who was a competitor of any other subsidiary, for instance, which last named should then cut its prices?

Q. Yes, and the price at which the material was sold was a high price?

A. In the first place how could a seller, subsidiary selling company, load up a purchaser? That was your question. How could they load up? I do not understand how that could be done.

Q. Suppose the price of the material which was sold for finishing purposes, or further manufacturing purposes, was high, and a competitor of one of the subsidiaries of the Corporation should be sold at this high price very largely by another subsidiary of the Corporation, and then the price of the finished article should be cut by another subsidiary that was a competitor of this concern that bought the high priced material; how would that operate upon the question of competition and promoting competition and fairness of competition?

A. Well, it seems to me that that would be equivalent to asking me how the vicissitudes of trade, the changes in market price, would affect competition. If there was a conspiracy, we will say, which could be carried into effect—and I can hardly imagine such a thing—I was going to try to assume a

state of facts for you that would make a question in my mind, but I cannot do it.

Q. You spoke of the vicissitudes of trade depending upon prices; but suppose a concern like the United States Steel Corporation should have two subordinate companies, one of them that sold a material that had to be finished up into a higher product to an independent concern, and it had another subsidiary company that produced and sold in the market the same kind of finished product.

A. As the purchaser?

Q. As the purchaser did of the semi-finished material. Now, if the company which sold through its subordinates to this independent at high prices, which were then prevailing, but which were high prices, and after that was done so as to, to use the term, load up this independent company, the other company which competed with this independent concern in the product should lower the price on that product to a point to make it unprofitable for the independent concern, having paid that price, to finish it up and sell it in the market in competition.

Now, I ask you, if such a thing should take place, how would you consider that, upon the question of promoting competition and fair competition?

A. Judge, I do not think the two subsidiary companies of the Steel Corporation would bear any relation to each other as affecting this question. It seems to me the purchase by one independent outside manufacturer of semi-finished product of one of our subsidiaries would stand on its own base dependent upon the conditions of trade. However, if one of our subsidiary companies should at any time lower its price, lower the generally existing prices to a very low basis for the purpose of injuring a competitor in the finished product who had through any source been loaded up with a large supply, that would be unfair and unreasonable competition.

Q. If it had been loaded up from another subordinate of the Corporation, that would aggravate the conditions, would it not?

A. No, I do not see that that would make any difference.

Q. You do not?

A. No.

Q. Suppose it was done for that purpose and with the knowledge upon the part of that subordinate company that the price was going to be lowered by the other subordinate company?

A. I do not see that it would sell any more or less because it knew what the subordinate company expected to do. There might be circumstances that would be unfair and unreasonable, but perhaps this answers your question: If any of our companies, for the purpose of injuring a competitor, whatever the circumstances, should suddenly and unduly reduce its prices which it expected would be temporary and which were reduced simply for the purpose of injuring the competitor and not because conditions demanded it, I think that would be unfair competition and unreasonable competition and destructive competition? Now, if you have some facts there that I know anything about——

Q. Yes, I am going now to ask you about some facts.

A. And I will see if I know anything about them.

Q. And in view of what you have said, then I would call this to your attention, in the light of that statement from you. I will read from the Carnegie minutes of August 26, 1902, Volume II, Government Exhibits, page 475:

"Mr. Bope: The president directed me"—Mr. Corey was president then, was he not?

A. Yes.

Q. (continuing): "—a few days ago, to go after Sheet Bar tonnage, and we have closed for between five and six thousand tons at very good prices, one sale being at $33.00 our works. We have to do this because the Sheet Steel and Tin Plate Companies are not requiring the tonnage in this line that we have to dispose of. Our selling to the independent mills at high prices ought to react to the benefit of the Tin Plate and Sheet Steel Companies later, because if we can fill these other people up at high prices, our companies can cut prices and take the orders."

Now, I will read from the same volume, page 476, the next page, down at the bottom. Mr. Bope is the speaker:

"The Tin Plate Company are covered by contracts up to

the first of December. At that time they anticipate making a heavy cut in prices, which they think will put ninety per cent. of their competitors out of business. If this move proves as successful in securing business as is expected, the Sheet Steel Company will probably reduce to an equivalent basis. Both companies figure that they can then run full for at least the first half of next year."

Now, do you know whether the price of the finished product was cut?

A. I do not. I do not know anything about that. I have no recollection now on the subject. I consider those statements very foolish and probably more or less they are not based on the facts, but——

Q. Do you know anything about the facts?

A. No, but I know this much, Judge. I know what the former disposition of the Carnegie people was, and I know very well that Mr. Bope at the present time, if he read that language, would be ashamed of it.

Q. How about the American Tin Plate people; what kind of a reputation did they have?

A. I did not know so much about them. I do not know; I cannot answer.

Q. Did you know this method and practice and policy of the Carnegie Company before the formation of the United States Steel Corporation?

A. To some extent, yes.

Q. Well, you had had some experience with some of their competition in the Illinois Steel Company, had you not?

A. Well, I knew something about it, yes.

Q. And still, when the United States Steel Corporation was formed, Mr. Schwab, who had been with the Carnegie Company, was its first president?

A. Yes.

Q. And Mr. Corey, who succeeded him as president of the Carnegie Company, and Mr. Bope, who had been with the Carnegie Company for years during these practices, were continued with the Carnegie?

A. Yes. We expected to change all those notions and all that conduct, and we did. It took some time, I admit.

Q. Those were the only men, I suppose, that you could get who had been following these bad practices, or had everybody been doing that?

A. In the Carnegie Company?

Q. No, I mean were there any other people when you started off on this new system of beneficent competition—were there not others that could have been put at the head without those who had been indulging in this exasperating and extreme and unfair competition?

A. You characterize our disposition as beneficent. I never put it on that ground. I do not want to pose as a philanthropist in business. But these practices which I do not approve of and never have approved of, and our Corporation as such from the start did not approve of, were not confined to a particular company or to particular individuals, in my judgment.

Q. Pursuing this same subject, Judge, I will call your attention to Government Exhibits, Volume III, page 964, minutes of the Executive Committee of the United States Steel Corporation of November 11th, 1902, at which you are recorded as being present:

"Price reduction on finished products.

"The chairman submitted to the meeting the communications he had received from President McMurtry, President Graham and President Schiller, under date of the 10th instant, concerning the recent reduction in the prices of finished products of the American Sheet Steel Company, American Tin Plate Company and the National Tube Company.

"Upon motion, duly seconded, it was voted that this committee hereby recommends the action suggested by President McMurtry in his letter to the chairman, dated the 10th instant."

What company was Mr. McMurtry president of?

A. He was president of the American Sheet Steel Company.

Q. And Mr. Graham the president of what company?

A. The American Tin Plate Company.

Q. And President Schiller?

A. Hearne was the president of the National Tube Company, I believe.

Q. And what was Schiller?

A. Schiller was vice president at that time, I think.

Q. He was one or the other, vice president or president?

A. Apparently he had succeeded Hearne at that time.

Q. He was president?

A. Yes, sir.

Q. Have you those letters there referred to?

A. No.

Q. I mean that letter of Mr. McMurtry's dated the 10th instant?

A. I have not. I have not the slightest recollection about that.

Q. Do you know what the contents of it was?

A. I do not. I should think from that it was a recommendation to reduce their prices.

Q. Do you know whether the prices were reduced?

A. No. I do not remember. It is quite likely they were. Of course prices have been reduced at times.

Q. I will ask you if it is not a fact that on November 1st, 1902, the Steel Company did reduce the price of tin plates from $4 to $3.60?

A. I have no recollection.

Q. Do you know whether there was any corresponding reduction at that time in the price of tin plate bars?

A. I do not remember.

Q. Judge Gary, when the United States Steel Corporation took over the Union Sharon properties, did those concerns have any more ore in proportion to the needs for their plants than the United States Steel Corporation as an entirety at that time had in proportion for the needs of its plants? If so, state what the differences were.

A. I should think not.

Q. Then was there any surplus of ore gained in this way after supplying the needs of the Union and Sharon companies which could be used for the other works of the Steel Corporation?

A. I should think not except in this way: You see, Judge.

if we had built furnaces of our own then those furnaces would have had to take their ore out of our then holdings of reserve, whereas by buying these furnaces we secured ore with the furnaces. There would be that difference in favor of protecting ourselves.

Q. Then by buying their properties and their plants you got the ore for those plants, but you got no more ore for your other properties?

A. No, I should think not.

Q. Well, then, you did not need those ores for your operations?

A. Oh, I think we did, and a good deal more, so far as that is concerned.

Q. But you used it for operating those plants, did you not?

A. Oh, yes. We might need it and yet not be able to get it.

Q. But did you get it because you needed it for the United States Steel Corporation independent of the needs for the Union-Sharon properties?

A. No, not if I understand your question.

MR. DICKINSON: Repeat the question.

(The stenographer thereupon read the question as above recorded.)

MR. DICKINSON: Do you think you understand the question?

A. I think so. As we needed those ores for the furnaces of the Union Steel Company then those ores would not result in furnishing an extra supply of ore for the companies which we owned before we purchased the Union Steel Company.

Q. And getting the plants of the Union-Sharon Companies created a need for the ores of that company?

A. Well, we might have had the need just the same for the other furnaces, but we could not supply the need because the Union furnaces needed the ore.

Q. Therefore you did need this ore for the plants that you acquired with it?

A. That is true.

Q. And not for your other properties?

A. I do not think you quite understand me, Judge.

Q. I think so. There was no surplus, at any rate?

A. No; that is right.

Q. Do you know the names of the mining properties that were acquired by the Union?

A. I did know them thoroughly at the time.

Q. Do you know whether the Penobscot was one of them?

A. I do not remember.

Q. Do you know whether you have ever used the Penobscot Mine from that day to this?

A. I do not remember.

Q. I offer in evidence the Directory of the Iron and Steel Works of the United States, the volume for 1904, pages 21 to 25, and follow the method which we have been following, on both sides of reading it into the testimony.

MR. LINDABURY: Objected to as irrelevant, unauthenticated, and as secondary evidence.

THE WITNESS: (Reading:)

"UNION STEEL COMPANY.

Practically all the stock of the Union Steel Company is owned by the United States Steel Corporation.

Union Steel Company; executive office, Empire Building, No. 71 Broadway, New York; Auditor's and Treasurer's office, Carnegie Building, Pittsburgh. Officers: W. B. Dickson, President; W. J. Filbert, Secretary; James J. Campbell, Auditor; and W. C. McCausland, Treasurer. Capital stock, $20,000,000, all common.

On December 1, 1902, the Union Steel Company acquired all the capital stock and all the properties of the Sharon Steel Company and the Sharon Sheet Steel Company.

It also owns all the capital stock of the Donora Mining Company, the River Coal Company, the Republic Coke Company, the Sharon Ore Company, the Sharon Coke Company, the Mercer Valley Railroad Company, and the Donora Southern Railroad Company.

In addition it owns 60 per cent. of the capital stock of the Sharon Tin Plate Company and two-thirds of the capital stock

of the Sharon Coal and Limestone Company. It also owns (through the Donora Mining Company) two ore-carrying steamships, with an annual ore-carrying capacity of 228,000 tons.

The Union Steel Company owns the manufacturing plants named below, all of which are operated by constituent companies of the United States Steel Corporation.

BLAST FURNACES—4 COMPLETED AND 1 BUILDING.

Donora Furnaces, Donora, Washington County, Pa. (To be operated by the Carnegie Steel Company (of New Jersey). Two stacks, Nos. 1 and 2, each 85x22, built in 1902-4; not blown in down to April 30, 1904; four Kennedy stoves, each 100x24; fuel, Connellsville coke; ore, Lake Superior; product, basic open-hearth pig iron; estimated total annual capacity, 365,000 tons. Equipped with two Heyl & Patterson pig-iron casting machines. (The furnaces were partly built by the Union Steel Company and were completed by the Carnegie Steel Company (of New Jersey).—See page 6.

South Sharon Furnaces, Sharon, Pa. (Operated by the Carnegie Steel Company (of New Jersey). Three stacks, two completed and one building; No. 1, (completed), 100x22, built in 1900-1 and blown in in September, 1901; No. 2, (completed), and No. 3, (building), each 85x19, built in 1902-4; No. 2 not blown in down to April 30, 1904; No. 3 to be blown in later; No. 1 has four Cowper-Kennedy stoves, each 100x22; and Nos. 2 and 3 have each four Cowper-Kennedy stoves, each 90x21. Fuel, coke; ore, Lake Superior; product, basic pig iron; total annual capacity of the completed furnaces, 320,000 tons; of the building furnace, 120,000 tons; total, 440,000 tons. Equipped with two single strand Heyl & Patterson pig-iron casting machines. (Furnace No. 1 was built and formerly operated by the Sharon Steel Company; it was also operated later by the National Steel Company. Furnaces Nos. 2 and 3 were partly built by the Sharon Steel Company and the National Steel Company; No. 2 was completed and No. 3 is being completed by the Carnegie Steel Company (o
—See page 9.

Total annual capacity of the 4 completed furnaces, 685,000 gross tons; of the building furnace, 120,000 tons; total, 805,000 tons.

ROLLING MILLS AND STEEL WORKS—6.

Donora Steel Works, Donora, Washington county, Pa. (To be operated by the Carnegie Steel Company (of New Jersey). Built in 1902-3; twelve 50-gross-ton Siemens basic open-hearth furnaces with an annual capacity of 300,000 tons of ingots, four 4-hole soaking pits, and one 40-inch blooming mill; product, billets, blooms and slabs; annual capacity, 240,000 tons. Fuel, natural gas.—Not put in operation down to April 30, 1904.—See page 10.

Donora Works, Donora, Washington county, Pa. (Operated by the American Steel and Wire Company of New Jersey.) Built in 1900-1 and put in operation in September, 1901; 4 heating furnaces, one continuous and one right and one left hand Garrett finishing rod mills, 308 wire-drawing blocks, and 282 wire-nail machines; product, wire rods, bright and galvanized wire, barbed wire, wire nails, and staples; annual capacity, 200,000 tons of rods, 172,000 tons of wire, and 1,600,000 kegs of nails. Fuel, natural gas and coal. A galvanizing plant is connected with the works. (Formerly operated by the Union Steel Company.) See page 43.

Sharon Works, Sharon, Pa. (Operated by the American Steel and Wire Company of New Jersey.) Built in 1900-1 and first put in operation in May, 1901; first wire rods made in August, 1901; 3 continuous heating furnaces, 2 reheating furnaces, one continuous billet mill, 2 continuous rod mills, one tinplate bar mill, 180 wire-drawing blocks, and 181 wire-nail machines; product, tinplate bars, wire rods, wire, wire nails, galvanized wire, barbed wire, and staples; annual capacity, 97,000 tons of tinplate bars, 105,000 tons of wire rods, 86,000 tons of wire, and 900,000 kegs of wire nails. Fuel, producer gas and coal. A galvanizing plant is connected with the works. (Formerly owned and operated by the Sharon Steel Company.)—See pages 44-5.

Sharon Works, Sharon, Pa. (Operated by the American

Sheet and Tin Plate Company.) Built in 1900-1 and first put in operation May 16, 1901; 20 sheet and pair furnaces, 6 double annealing furnaces, twenty 26-inch hot mills, and 15 sets of 22-inch cold mills; product, black plates for tinning; annual capacity, 45,000 tons. Fuel, manufactured gas and coal. Make tinplates. (Formerly operated by the Sharon Tin Plate Company; later by the American Tin Plate Company.)—See pages 59-60.

Sharon Works, Sharon, Pa. (Controlled by the American Sheet and Tin Plate Company.) Built in 1901-3; not yet put in operation; 10 pair and 10 sheet furnaces, 3 double annealing furnaces, 10 hot sheet mills, (one 28x48, and eight 28x38-inch), and 6 cold mills (two 22x54 and four 22x48 inch); product, black sheets; annual capacity, 30,000 net tons. Fuel, coal and producer gas. (Partly built by the Sharon Sheet Steel Company; completed by the Union Steel Company.)—See page 59.

South Sharon Works, Sharon, Pa. (Operated by the Carnegie Steel Company (of New Jersey). Built in 1900-1; twelve 50-gross-ton basic open hearth steel furnaces with an annual capacity of 350,000 tons of ingots; first steel made April 30, 1901; 4 soaking pits, one 36-inch blooming mill, one 30-inch universal mill, and three 26-inch bullhead mills; product, blooms, billets and universal plates; annual capacity, 310,000 tons. Fuel, producer gas. Five additional 50-gross-ton basic open-hearth steel furnaces are projected. (Formerly operated by the Sharon Steel Company; later by the National Steel Company.)—See page 15.

Total annual capacity of the 6 works, 650,000 gross tons of open-hearth steel ingots, 550,000 gross tons of slabs, blooms and billets, 97,000 gross tons of tinplate bars, 45,000 gross tons of black plates for tinning, 30,000 net tons of black sheets, 75,000 gross tons of universal plates, 305,000 gross tons of wire rods, 258,000 gross tons of wire, and 2,500,000 kegs of wire nails.

Tinplate Works.

Sharon Works, Sharon, Pa. (Operated by the American Sheet and Tin Plate Company.) Built in 1900-1 and first tin-

plates made in July, 1901; 24 sets; weekly capacity, 18,000 boxes of tinplates. Fuel, coal. Make black plates. (Formerly operated by the Sharon Tin Plate Company; later by the American Tin Plate Company.)—See page 63.

Wire and Wire-nail Works.

Donora Works, Donora, Pa. (Operated by the American Steel and Wire Company of New Jersey.) Product, wire rods, plain, galvanized and barbed wire, staples and all sizes of wire nails. Annual capacity, 200,000 tons of rods, 172,000 tons of wire, and 1,600,000 kegs of nails. Wire department: Number of wire-drawing blocks, 308; sizes of wire drawn, from 5/8 of an inch to 1-32 of an inch. Wire-nail department: Number of machines, 282; sizes from 2-penny spike to 2-penny nail. (Formerly operated by the Union Steel Company.)—See page 47.

Sharon Works, Sharon, Pa. (Operated by the American Steel and Wire Company of New Jersey.) Product, wire rods, plain wire, barbed wire, wire nails, galvanized staples, etc. Annual capacity, 105,000 tons of rods, 86,000 tons of wire and 900,000 kegs of nails. Wire department: Number of wire-drawing blocks, 180; sizes, from 5/8 of an inch to No. 22 gauge. Wire-nail department: Number of machines, 181; sizes, from 3-penny fine to 60-penny. (Formerly operated by the Sharon Steel Company.)—See page 49.

Total annual capacity of the 2 works: 305,000 tons of rods, 258,000 tons of wire, and 2,500,000 kegs of wire nails.

Galvanizing Works.

Donora Works, Donora, Pa. (Operated by the American Steel and Wire Company of New Jersey.) Number of galvanizing pans, 4; product, fence wire; annual capacity, 67,500 tons. (Formerly operated by the Union Steel Company.) See page 50.

Sharon Works, Sharon, Pa. (Operated by the American Steel and Wire Company of New Jersey.) Number of galvanizing pans, 3; product, fence wire; annual capacity, 28,-

000 tons. (Formerly operated by the Sharon Steel Company.) See page 51.

Total annual capacity of the 2 works: 95,500 tons.

Wrought-steel Pipe Works.

Sharon Tube Works, Sharon, Pa. (Controlled by the National Tube Company.) Equipped to produce wrought-steel pipe; sizes, from ⅛ of an inch to 12 inches, outside diameter; annual capacity, 100,000 tons. (Formerly owned by the Sharon Steel Company.)—Never in operation and not likely to be operated on its present site.—See page 37.

Sharon Steel Company and Sharon Sheet Steel Company.

The Sharon Steel Company and the Sharon Sheet Steel Company are no longer operating companies, their properties having been transferred to the Union Steel Company on December 1, 1902.

Sharon Ore Company.

This company owns the Sharon iron-ore mine, in the Mesabi Range, in St. Louis County, Minnesota. All its capital stock is owned by the Union Steel Company. For forther information concerning this company see page 77.

River Coal Company.

This company owns 1,500 acres of coal lands in Fayette County, Pa., the development of which has just been commenced. All its capital stock is owned by the Union Steel Company. For further information concerning this company see page 74.

Donora Mining Company.

This company owns the Penobscot, the Sweeney and the Donora iron-ore mines in the Mesabi Range, in St. Louis County, Minn., and the Volunteer iron-ore mine in the Marquette Range, in Marquette County, Mich. In addition it owns about 1,900 acres of iron-ore lands in the Marquette Range, in Mar-

quette County. Its capital stock is owned by the Union Steel Company. For further information concerning this company see page 77.

SHARON COAL AND LIMESTONE COMPANY.

The Sharon Coal and Limestone Company owns 7,157 acres of coal and limestone property in Butler, Mercer and Lawrence counties, Pennsylvania. Two-thirds of its capital stock is owned by the Union Steel Company. For further information concerning this company see pages 74-5.

SHARON COKE COMPANY.

The Sharon Coke Company owns 1,458 acres of coking coal lands at Masontown, Fayette County, Pa., and has 212 completed Otto-Hoffman retort ovens with a daily capacity of about 1,200 tons of coke. Its capital stock is all owned by the Union Steel Company. For further information concerning this company see page 75.

REPUBLIC COKE COMPANY.

This company owns 3,222 acres of undeveloped coal land and 511 acres of surface land in Fayette County, Pa. Its capital stock is all owned by the Union Steel Company. For further information concerning this company see page 75."

By MR. DICKINSON:

Q. You are acquainted with that publication?

A. More or less.

Q. Wasn't it published at the instance of the association?

A. I think so, yes.

Q. And your corporation was a member of it?

A. Some of our subsidiary companies, at least.

Q. Did the United States Steel Corporation subscribe for it?

A. No, I think not.

Q. Some of the subsidiary companies did?

A. Yes, and I have no doubt the Steel Corporation did this.

Q. And this continued along down constantly, did it not, that publication?

A. I cannot tell you to what date.

Q. The publication of it is controlled by the American Iron & Steel Institute, of which you were president?

A. Judge Dickinson, I do not know that this directory is published at all now. I will say that the American Iron & Steel Institute has taken over the work and office of the American Iron & Steel Association.

Q. They published that?

A. They did publish this last directory, and are receiving and publishing statistics.

Q. The same kind of statistics?

A. Similar statistics, I will say. Of course you must understand that I did not personally have anything to do with these statistics.

Q. Of course, I know you are too busy a man for that. Please look over what is set out there as to plants and products of the various concerns of the Union-Sharon Companies. That speaks as of the year 1903, does it not?

A. I have no doubt that is so, because this seems to have been published in 1904.

Q. See what period it covers, Judge, will you?

A. Corrected to August 1st, 1904.

MR. LINDABURY: The title page so declares.

By MR. DICKINSON:

Q. When did the Steel Corporation take hold of the Union properties—December 15, 1902, was it?

A. I think that is right.

Q. Now, state whether or not at the period that this book speaks of that concern had the properties and plants and products therein set out. Just pick that out and state.

MR. LINDABURY: That is a pretty broad question.

MR. DICKINSON: But it is easier than reading it.

MR. LINDABURY: But that is omnibus.

By MR. DICKINSON:

Q. State generally.

A. I think so, generally.

Q. Had there been any material change in the kind of products produced, or in the character of the works or the capacity of the works between the time the corporation took over those properties, and the time that book speaks of?

A. I think there had. I cannot give you the details, my memory is not good enough, but we commenced to work there immediately, expended very large sums of money from time to time finishing up furnaces.

Q. Is not that set out there? Suppose you look and see what you did after you acquired them.

MR. LINDABURY: Do you mean addition or development?

MR. DICKINSON: Yes.

THE WITNESS: For instance, you see, the furnaces were partly built by the Union Steel Company and completed by the Carnegie Steel Company of New Jersey.

MR. LINDABURY: Those are the Donora Furnaces you are speaking of?

THE WITNESS: Yes. I am speaking of the South Sharon furnaces, three stacks, two complete and one building, No. 1 completed, and so on; No. 3 furnace was building at South Sharon.

By MR. DICKINSON:

Q. I will ask you a question that may relieve you of some detail there, and that is this: Had you done any more than carry out and complete what was in process of construction or already planned, when you took over these properties? If so, what entire new addition not then contemplated or planned was added?

A. I cannot tell you exactly, but I am very sure we did extend the works, commenced extending them immediately, and we can give you evidence of just how much we expended, when and for what, following our purchase.

Q. I am not asking so much what you expended, but I am asking you whether or not you extended anything that was in process of construction or that was contemplated, with plans already adopted at the time you took that over?

A. I think we did materially.

Q. But what?

A. I could not tell you. I don't remember.

Q. How many furnaces did it have planned or in process of construction when you took it over?

A. I cannot answer that.

Q. I think you said five in your last answer.

A. You mean blast furnaces?

Q. Yes.

A. Five.

Q. How many did it have in 1903; did it have any more than that?

A. No.

Q. Open hearth furnaces; how many did it have?

A. It seems to me it had 24.

Q. When you took it over?

A. We built some additional.

Q. How many more did it have in 1903?

A. Than it had in 1902?

Q. I mean from the time you took it over until that book speaks of, had there been any increase in the open hearth furnaces?

A. I do not think there had. I do not think in 1904 there had been any increase in the number of furnaces which had been built or were contemplated when we bought it.

Q. How many mills?

A. That I am not so sure about. We commenced extending, but exactly when I cannot be sure.

Q. Do you remember how many blooming mills it had when you took it over?

A. I do not. I do not want to undertake to be specific there, because my memory is not good enough.

Q. I will see whether or not, carrying your mind back to that period and calling your attention to some things that were of general publication, that will recall your recollection. I call your attention to Government Exhibit 178, Volume IV, page 1518, which is an article of March 28, 1901, from the Iron Age:

"The Sharon Steel Company.—(By Telegraph)—Pittsburgh, Pa., March 27, 1901.—The Sharon Steel Company of

Sharon, Pa., will double the capacity of the new tube mill at Sharon, the additional cost being nearly $1,500,000. The new plant will have a daily capacity of 400 tons of basic steel tubing instead of 250 tons, as at first proposed. Tubing will be made in one mill up to 6 inches in diameter, and in another up to 14 inches. The skelp mill will have a daily capacity of between 500 and 600 tons, or 200 tons more than at first proposed. The Sharon Steel Company will also make boiler tubes on a large scale."

Now, Judge, do you know whether it had a tube mill at that time, and whether it was about to double its capacity?

A. My recollection is it had a tube mill, but I am inclined to think the proposition to double its capacity was talk.

Q. Was which?

A. I am inclined to think the proposition to double its capacity was talk; only talk.

Q. How about the skelp mill. Do you know whether it had a skelp mill?

A. No; I do not remember.

Q. Do you know whether they were planning to make boiler tubes on a large scale?

A. No.

Q. I call your attention to Government Exhibit 179 on the next page, from the Iron Age of September 19, 1901, and ask you what your recollection is about certain things therein mentioned.

Mr. Lindabury: Before you do that, I did not want to interrupt you, but I would like now at least to note an objection. Counsel having put in evidence unauthenticated telegrams and newspaper articles, he cannot now justify them or use them for the purpose of examining a witness or proving on cross-examination their truth or otherwise.

Mr. Dickinson: The articles were identified then.

Mr. Lindabury: As something published in the newspaper, yes.

Mr. Dickinson: And it has been shown that these articles were widely read in the trade and that all well-informed people in that business kept posted in the business through trade journals of this character.

MR. LINDABURY: Not that all well-informed people did.

MR. COLTON: That is what Mr. Roberts said.

MR. LINDABURY: Well, I did not hear Mr. Roberts' testimony. I do not think Mr. Roberts referred to these articles, did he?

MR. DICKINSON: I do not know that he was asked about this particular one.

By MR. DICKINSON:

Q. I will read:

"The Union Steel Company.—The new rod, wire and nail mills of the Union Steel Company, at Donora, Pa., are now in operation, and the concern are turning out rods, wire nails, plain and annealed wire, barb wire and fencing, and are giving employment to about 1,000 men. In connection with the mills already in operation another large plant is to be erected at once. This will be built by the Mathews Woven Wire Fence Company, who are an identified interest of the Union Steel Company. The concern will make patent woven wire fencing and will get their entire supply of wire from the Union Steel Company. In a short time the Union Steel Company will break ground at Donora for the building of a blast furnace, and either 10 or 12 basic open hearth steel furnaces. Some of the contracts for the blast furnace and the steel works have already been placed. Julian Kennedy is consulting engineer, and the greater part of the plans are ready. The blast furnace will be 22 feet in diameter at the bosh and 90 feet high. The contract for the iron work has been given to the William B. Pollock Company of Youngstown, Ohio. The contract for the blowing engines was placed some time since with the Mesta Machine Company of Pittsburgh. It is the intention of the Union Steel Company to eventually build a second blast furnace, and for this reason five blowing engines have been ordered, and these will be able to supply air enough for both furnaces. As yet none of the contracts for the basic steel plant have been let, but these will be given out before long. The Union Steel Company have fortified themselves with ore and coke properties, and with the erection of blast furnaces and steel works will have everything within them-

selves and be able to make their finished products from the ore up. The Mellon interests of Pittsburgh are largely interested in the Union Steel Company. The offices are in the Empire Building, Pittsburgh, and W. H. Donner is president, and S. H. Waddell, secretary. The concern have already sold the greater part of their output of nails and wire for the next two months."

As described there, state whether or not you would call that a rounded-out proposition as you have used that term hitherto.

A. Well——

Mr. Lindabury: You mean as it existed or as the newspaper article described it?

By Mr. Dickinson:

Q. I say as described here.

A. I think that is an article calculated perhaps to influence the sale of bonds or stock. It is a pretty good proposition. I did not want to characterize it as not a very good proposition.

Q. Judge, they had the ore, did they?

A. Yes.

Q. And they made pig iron?

A. Expected to make pig iron.

Q. Didn't you say that they had a large amount of very valuable ore?

A. Not at the time we bought it; it was a little earlier.

Q. At the time you bought it, it was still rounded out a little more in the value of ore at least?

A. You can start to make a circle at any point in the circle.

Q. As described here and with the conditions that were met up to the time you got it, where did the initial and ending point of that circle fail to come in contact, so far as making it a rounded out proposition?

A. Well, I do not think from the starting point they could see the middle of the circle.

Q. Let us see. They had ore, didn't they?

A. They had some ore, yes.

Q. At the time you took them over?

A. Yes; they had some very good ore.

Q. About how much did they have?

A. I have forgotten that now.

Q. Could you approximate it?

A. No. They had some good ore, though.

Q. For a concern of that sort, what would you call a sufficiency of ore to make it a well rounded out, self-contained—I believe that is the language—proposition?

A. What quantity?

Q. What quantity, yes.

A. If they had 75 years' supply of good ore for all the furnaces that they had built or contemplated building, I should think that would be a very good supply, and be a good, natural and long step towards providing a self-contained or rounded out proposition.

Q. Well, it is rather an elastic element you put in there, isn't it, all that they might have contemplated building; but taking what they then had planned, what would you say as to 70,000,000 tons of ore as being sufficient, so far as ore is concerned, as to making it a rounded out proposition.

A. I should think that would be a pretty good supply.

Q. They had no railroad transportation, did they?

A. No.

Q. But they had furnaces?

A. They had some furnaces.

Q. Then they manufactured up to the finished products, did they not, in a great many things?

A. Some finished products.

Q. What did they make that you recall?

A. Well, they were prepared to make some wire, some tubes, some sheets, some skelp.

Q. Tin plate?

A. Some tin plate.

Q. Nails?

A. I think so. Some of their works were not very well put up. Some of their work had to be done over again after we got them.

Q. Do you mention plates among the things that they made?

A. Yes; they made them, or contemplated making them.

Q. They made billets, blooms and slabs?

A. That was to my mind, Judge, a pretty small proposition to try and succeed in competition with Jones & Laughlin, and such other concerns as that, at that time. You see, you are dignifying the proposition above my ideas of it.

Q. Yes, I know our ideas may differ as to that. Now, Judge, tell me how much larger at the time you took over these Union properties was the Jones & Laughlin than the Union properties, in capacity.

A. That I cannot answer.

Q. What was the capital, at the time, of Jones & Laughlin?

A. I think it was very much smaller. I do not think that would have much to do with it. That is, the nominal capital of a concern does not have much to do with the values of the properties.

Q. You do not think the question of capital had much to do with it?

A. I am speaking about the nominal capital.

Q. The nominal capital?

A. Yes.

Q. Well, the actual capital?

A. The actual capital investment?

Q. The actual investment; how did that compare at that time, at the time you acquired the Union?

A. Well, I should think the ability of Jones & Laughlin to manufacture and sell some products was very much greater. They did not, at that time, I think, have some of the kinds of property the Union Steel had, like ore and perhaps the same limits of product.

Q. Can you give any statement as to the comparative capital invested by these two companies at that time?

A. No, I cannot.

Q. Can you give any statement?

A. I should think the total capital invested by the Union Steel was larger than Jones & Laughlin at that time.

Q. Larger than all of Jones & Laughlin?

A. I should think so, yes.

Q. How about the capacity of the two plants compared;

that is, Jones & Laughlin at that time, and the Union with what it had, and what it was in process of building when you took it over and which you finished?

A. I cannot answer that definitely, but don't you see, the total capacity might be one thing, whereas the separate capacity, with respect to any one line would be another thing. If you mean the total tonnage capacity of the Union Steel, it might be larger than the total tonnage capacity of Jones & Laughlin in all lines, but that would not have much to do with the question.

Q. Name what lines, if any, that you know at that time, that Jones & Laughlin exceeded in capacity the Union Steel Company.

A. Well, I should think in steel, semi-finished steel.

Q. Anything else?

A. That is pretty comprehensive.

Q. That is most comprehensive, isn't it, of all, when you state that?

A. Yes.

Q. Do you know what the tonnage of either was?

A. No, I do not.

Q. Did you know Mr. A. W. Mellon?

A. Yes.

Q. He was president of that company, was he?

A. Of what company, the Union Steel?

Q. Yes.

A. No, Mr. Donner, I think, was president, wasn't he?

Mr. Lindabury: No, I don't think either of them was.

By Mr. Dickinson:

Q. You knew Mr. Mellon?

A. Yes, I knew Mr. Mellon.

Q. Was he a man that could command large means or not?

A. Yes, he was a wealthy man.

Q. A wealthy man?

A. Yes.

Q. Connected with banking interests?

A. Yes.

Q. Head of one of the large banks there in Pittsburgh?

A. Yes; he and others.

Q. His brother?

A. Yes.

Q. Well, was Mr. Frick a man of means at that time?

A. Yes.

Q. He was identified with the Union, wasn't he?

A. Yes.

Q. Largely interested in it?

A. Yes.

Q. Did you know John Stevenson, Jr.?

A. I did not know him then; I met him afterwards.

Q. Was he a man of means?

A. Judge, you know, and I do not remember, but wasn't the Union Steel made up, or didn't it take over the Sharon properties and the Donora properties?

Q. Well, the Union and Sharon were combined, and then you took over the two together?

A. Yes, the Sharon and Donora combined in Union, didn't they? And then we took over the Union?

Q. Yes, then you took over the Union after the combination. These men were financially strong, were they not?

A. Yes, they were comparatively strong, but when you speak of $50,000,000——

Q. I do not mean compared with the United States Steel Corporation, but compared with Jones & Laughlin and other concerns?

A. Yes.

Q. Had there been any putting together of interests or any combination which was as large as the Union and Sharon combined between that time and the formation of the United States Steel Corporation?

A. Between the time the Steel Corporation was formed and when we bought the Union Steel?

Q. At the time the Union and Sharon were together, had there been any combination within that time as large as that?

A. I do not remember dates. When was the Republic Iron & Steel formed, for instance?

Mr. Colton: Before the formation of the Corporation.

The Witness: I cannot answer that from memory.

By Mr. Dickinson:

Q. Do you know of any large combination between the formation of the Corporation and the time you took over the Union Sharon Company other than the combination of the Union and Sharon properties?

A. I do not think of any. Judge Dickinson, it is only fair to say that the Union Steel Corporation up to the time we bought it did not promise to be successful. We had no doubt, and I am sure it was the general feeling, that the company would not succeed, and I firmly believe it would have failed as a manufacturing concern. I do not deny that Messrs. Frick and the Mellons were able to finance a good sized corporation, but we did not regard those as successful or promising success.

Q. They had men who were able in it, you say?

A. Who, for instance?

Q. Mr. Frick.

A. Mr. Frick was not giving it any attention. Mr. Mellon was not a manufacturing man.

Q. Mr. Donner was, wasn't he?

A. He had ability, yes.

Q. Hadn't Mr. Stevenson experience largely in manufacturing?

A. I knew of him considerably and have seen him since. He was a man who built plants to sell.

Q. And built them so good that they were sold, didn't he?

A. He did. He was a man of peculiar disposition, a Scotchman, and sharp.

Q. And he had a faculty of getting in other people's way and getting bought out, had he?

A. Yes, I think he had, more or less.

Q. They had some capital, and they had some men of ability, with large fianancial resources?

A. Yes. And there were men in there who undoubtedly got very tired of it.

Q. And they had furnaces which you said you needed?

A. Yes; that is true.

Q. Now, had there been any failure up to that time in any particular?

A. Well, the books will show. I doubt if their books will show any success.

Q. I am not asking what their books show. I am asking you if you know any fact that had transpired up to the time you took over the Union Sharon properties which showed a failure on the part of that company.

A. I knew then very well the talk of the town, so to speak.

Q. Wasn't it the talk of the town that they were developing and increasing their facilities into a very large concern, compared with other concerns outside of the United States Steel Corporation?

A. No, it was not; it was the opposite of that.

Q. How about the talk of the papers?

A. I do not know; I don't remember.

Q. You are a reader, are you not, of the Iron Age?

A. More or less. I cannot say that I ever read the Iron Age carefully and thoroughly. Anything I was particularly interested in I read.

Q. Where you were about to buy properties?

A. I would not read the Iron Age to find out the value of any property that I was going to buy.

Q. You would not depend upon it in that line of inquiry?

A. No.

Q. You would not pay any attention to that?

A. I would not say that. If they purported to publish a fact and they said that, I would read what was said, but I would not buy property upon the publications in the Iron Age or any other periodical.

Q. Do you know whether or not the Union Steel Company and the Sharon Steel Company were the largest individual makers of rods, wire and wire nails, outside of the American Iron & Steel Company?

A. No; I do not know that.

Q. Do you know to the contrary?

A. No.

Q. Do you know that they had complete and modern plants?

A. They had modern plants. Some of them were good and some of them were not so good.

Q. Which were not good? Can you specify which they were?

A. I cannot give you the details now. I know some of their plants were not well constructed, quite to the contrary, some of their mills. At that time I knew very well. You must understand that when we were considering the purchase of any properties at the time we endeavored to and did make very careful inquiry into them. We visited those properties and we called our presidents together and had them make examinations, and we had reports of all sorts and descriptions, and at that particular time I knew all about them, and considerably in detail, but after the purchase was made that was the end of my interest in that question. We had them for good or bad, and began to improve them, but I have had all these years so many other things to consider that I have not carried these details in my mind, and I must plead inability to remember the details.

Q. And you cannot give any statement of fact that indicates inefficiency on their part? That is, you cannot specify anything?

A. No, except to say that we had to rebuild a good many different things. I remember that distinctly.

Q. Did you have to rebuild any new plants, blast furnaces?

A. I think the blast furnaces were all right.

Q. How about open hearth furnaces?

A. The open hearth furnaces were all right.

Q. How about the nail mills and wire?

A. I do not remember; I think most of them were all right. The Donora plant was better than the Sharon plant, as I remember, very much better. I think Mr. Donner built the Donora plant, and I think that is pretty good; very good.

Q. Don't you know that upon the merger of the two companies the capital stock was between $40,000,000 and $50,000,000?

A. Well, if you say it, I am willing to admit that I knew it.

Q. No, I was just asking if you know.

A. I have great confidence in you, Judge; I do not remember.

Q. Well, I am not on the stand.

Do you know anything about their planning to build a rail mill at Donora?

A. No, I do not. I do not remember to have ever heard it.

Q. If you did know it, it has passed out of your mind?

A. Yes, if I ever knew it I have forgotten it.

Q. Do you know of any announcement or official statement that was made in the Iron Age that they proposed to build a steel rail mill at Donora or Sharon?

A. I do not.

MR. LINDABURY: One moment. Is there any evidence of an official statement?

MR. DICKINSON: Yes.

MR. COLTON: It is called official here. We do not know whether it is or not.

THE WITNESS: What date?

By MR. DICKINSON:

Q. I will read it.

"October 30, 1912. Government Exhibit No. 183," page 1524:

"A New Rail Mill.—In all probability the Union Steel Company will build a large rail mill at Donora, Pa. An official statement of the matter has been issued as follows: 'We propose to build a steel rail mill either at Donora or Sharon which will cost $5,000,000, that will be almost as large as the Edgar Thomson Works of the Carnegie Company. We expect to expend from $25,000,000 to $30,000,000 in improvements. We have had plans prepared for an extension of the West Side Belt Line into the Connellsville coke country and down the Ohio, along the Beaver and through Sharon to Elk Harbor.'"

Do you remember seeing that notice?

A. I do not. I am very much surprised to hear you read it. Who signed it?

Q. It is an announcement in the Iron Age. I have just read it as it is. I have not added anything.

MR. LINDABURY: It is one of those accelerating statements that come out.

MR. DICKINSON: It seemed to accelerate because it was just four days after that when it was taken over by the United States Steel Corporation.

MR. LINDABURY: Yes, but negotiations were under way at that time. Those announcements always help negotiations that are pending, or are thought to do so.

THE WITNESS: Well, Judge, I do not believe I ever heard it; at least I have no recollection.

By MR. DICKINSON:

Q. Judge, you stated in your direct examination that the United States Steel Corporation bought pig iron sometimes to cover necessities. Do you not know that at times in buying pig iron it was influenced by a desire or purpose to maintain prices of pig iron for the effect it would have upon the prices of finished products?

A. I have no recollection of anything of that kind.

Q. Do you not know that such a purpose was the policy of some of the constituent companies?

A. It might have been in the early years, possibly.

Q. Within what period?

A. Well, as I said this morning, I am unable to state the exact dates, but I attempted to give to you circumstances which will enable you to form some idea perhaps.

Q. I will call your attention to the minutes of the Carnegie Steel Company of May 11th, 1903, Government Exhibits, Volume II, page 491. I will first ask you whether or not you at that time were a director of that company?

A. As I stated this forenoon I was nominally a director, and I explained to you what I meant by that.

Q. In that connection I will ask you whether or not, being a director, you looked over the minutes of that company to inform yourself of what they were doing?

A. I am afraid I did not, Judge. I ought to have done so.

Q. Well, I will read this and see what you think about this:

"Purchase of Iron for Third Quarter.

"Mr. Corey: I should like to have the views of the Board as to the advisability of buying iron for the third quarter. There is understood to be about 65,000 tons in the market for

the third quarter's delivery, and if we buy at this time it will be largely for the purpose of preventing the furnace people from offering it around, and thus demoralizing the market. If we could buy up all that is to be had, it would undoubtedly do a great deal of (sic) strengthen the situation. The price would be around $18.00 Valley.

"On discussion it was agreed that iron for the third quarter should be purchased on assurances from the furnace people that 65,000 tons was all the available iron for that quarter and that no more would be put on the market."

Did you ever attend any of the meetings while you were a director?

A. I did not.

Q. Then you do not personally recall that, not being present?

A. No.

Q. What do you say as to the facts recorded there, assuming them to be true, whether that is calculated to foster competition and fair dealing as to competitors?

A. Well, that would not hurt competitors, would it?

Q. How about prices——

A. It would not hurt other purchasers of iron. It might prevent the demoralization of finished products.

Q. How about prices? Suppose they had sold finished products upon the price of pig iron as a basis.

A. Then this would be a benefit to them.

Q. A benefit to the Carnegie Company?

A. And a benefit to the others, too.

Q. Would not they have to pay more?

A. Oh, no; that would only sustain the market; that tendency would be to sustain the market. Of course, you must remember the furnaces were producing iron all the time. If the competitors of the Carnegie Company had sold their finished products on the basis of these prices, then it would be to their interest to have these prices sustained.

Q. Whose interest?

A. Of the competitors who had purchased pig iron at these prices, and sold the finished steel on the basis of them.

Q. But suppose people had purchased and had contracts

with the Carnegie Company for finished products of the Carnegie Company, or semi-finished products, for it would be semi-finished products, and the price that they were to pay was to be based upon the ruling price of pig iron at the time the thing was delivered, would it be to their interest to keep up the price of pig iron?

A. That would depend upon circumstances, of course. If they had also sold their steel against those prices, then it would be to their interest to have the prices maintained, don't you see?

Q. But if they had not and they paid a higher price?

A. There might be circumstances which would make it for the interest of purchasers of semi-finished products to have the price of pig iron sustained. Of course that is possible. It would depend upon all the circumstances.

Q. Well, how would it foster trade to keep up——

A. (Interrupting) It would not extend it.

Q. (Interrupting) How would it foster trade to keep up the price of pig iron, which was the base of all iron and steel products; wouldn't it keep up the prices to the consumer of iron and steel products?

A. As a rule, the reduction of prices, particularly extreme reductions, do not increase trade. As a rule, the contrary is true.

Q. Do you mean people do not buy when it is cheaper?

A. I mean when prices begin to go down, then as a rule the general public declines to purchase, and wait until they get to some point where perhaps they find they are not going lower; very frequently wait until they go higher again before they buy.

Q. But if it goes down and gets to a steady point, they are more apt to buy there than to wait until they get to a higher point?

A. Not particularly, no.

Q. So cheapness of article, then, has nothing to do with stimulating business and purchases?

A. The purchase of iron and steel is not just the same as the purchase of ordinary clothing and something to eat, it is a different kind of business.

Q. Does not keeping up the price of pig iron tend to enhance the price of things out of which pig iron is made?

A. Yes; that is, it tends to keep up the prices; not to enhance them, but to keep them up.

Q. To keep them from going down, then?

A. Yes; that is it.

Q. Now, I will call your attention in that connection to the meeting of the executive committee of the Steel Corporation of May 12, 1903, Volume III, Government Exhibits, page 972:

"Executive Committee Meeting, Tuesday, May 12th, 1903.

"Present: Messrs. E. H. Gary, chairman; C. M. Schwab, Charles Steele, E. C. Converse, William Edenborn, James Gayley.

"Purchase of Pig Iron.

"In regard to the proposition to purchase pig iron for the third quarter of this year, the President stated in substance: That he believes we ought to purchase 75,000 to 100,000 tons at the best price we can; that this would be advantageous at present prices because of the large amount of finished material we sell at prices dependent upon the price of pig iron; and therefore we ought not to endeavor to put down the price of the iron; that the proposed purchase would not be at all speculative because we have sold the steel to be made from it."

Now, you were a seller; that is to say, you had ore and you produced pig iron and you produced things made out of pig iron?

A. Yes, sir.

Q. Now, would not that have the effect of keeping up the price or preventing a decline in price of the articles that you made and were offering for sale out of pig iron or the products of pig iron?

A. I should say yes to that, as I understand your question. Will you let me make a comment on this?

Q. Surely, Judge. After you answer a question I want you to make all the explanations you want.

A. Thank you, you are very generous.

Q. No, it is not generous.

A. It is very fair; I appreciate it. Mr. Gayley was first vice-president. Now, undoubtedly from this, he was urging perhaps in representing the views of the Carnegie Company that the Carnegie Company buy pig iron at $19 per ton, arguing that the Carnegie Company was interested in the high price of pig iron, because that more or less determined the price of semi-finished steel. Now, I objected to that. I admitted, of course, that they were interested pecuniarily interested in a high price for pig iron for the reasons I have just suggested, but I said it seemed to me $18 was a good price.

Q. I was just going to read that.

A. Yes; $18 was a good big price, and I did not believe in paying $19 for pig iron which seemed to me was more or less a fictitious price, simply because we might be interested in it. That was my position.

Q. You were the chairman?

A. Yes.

Q. You said, it appears there, "it seems to me $18 is a good, big price. I am very well satisfied to have the market sustained"——

A. Sustained at $18——

Q. I am reading it just as it is.

A. Yes.

Q. "I agree with you that we are interested in having pig iron maintained, but I think we ought to be satisfied with $18.

"Mr. Gayley: I would rather buy it at $19.

"The President: I would favor $19 or $18.50.

"Upon motion, duly seconded, the matter was referred to the Finance Committee."

A. Yes.

MR. LINDABURY: You are getting along so well and so fairly that it prompts me to ask you to refer the Judge to the minute on the preceding page, which is all connected with it and is part of the same transaction and indicates the same attitude, under the head of "The Chairman."

MR. DICKINSON: I will bring that out first.

MR. LINDABURY: If you don't mind.

MR. DICKINSON: What part do you want first?

MR. LINDABURY: Under the head of "The Chairman."

By MR. DICKINSON:

Q. At the request of Mr. Lindabury, Judge, I call your attention to the executive meeting Tuesday, May 5, 1903, at page 970:

"PURCHASES OF PIG IRON.

"For July, August and September, 1903.

"The President stated that he would like to obtain the views of the Committee in regard to the advisability of the purchase of about 30,000 tons of pig iron at $18.50 for the third quarter of 1903, and for which we would exchange coke at the rate of $3 per ton; that we will require about 100,000 tons in that quarter; that he believes we ought always to be buyers of some pig iron; that it would be better to even shut down some of our high-priced furnaces and be purchasers, that the price of finished steel products being regulated by the price of pig iron, we ought not to be endeavoring to get the cheapest iron; that we ought to maintain the price by little purchases; that $1 a ton is such a little thing compared with the advantages we receive in the finished products; that if we had purchased pig iron there would not have been the present downward tendency in it.

"The Chairman: I would not be in favor of making the purchase. The price for our coke should be $3.50. We have bookings enough now to justify us in the purchase of 30,000 tons for those months, but can we spare the coke? I do not think we ought to buy pig iron at prices considerably higher than the price will be when we need the iron. I would hope that the business conditions are such that next July and August we have to buy pig iron at $18.50 or $19 a ton, but I do not think it is necessary to buy it now. The price advanced from $16 to $21 because of its scarcity, but the price of finished steel did not advance. I would like to see pig iron sift down to about $16.50 and stay there.

"Mr. Gayley: The first contract made for coke was at $3.50. The Inter-Company price is $2.60 plus. I think we

ought to hold the price of pig iron at $18.50 and that it is important for us to stay in the market and buy at $18.50; and rather than miss the deal I would recommend the exchange on the basis of $3 a ton for coke.

"Upon motion, duly seconded, it was voted that the matter be placed in the hands of the President to act."

By MR. DICKINSON:

Q. Now, turn over to May 26, page 973.

MR. LINDABURY: May 12th is the minute of the next meeting, and that you have already read.

MR. DICKINSON: Yes.

MR. COLTON: There is a difference in the quantity of iron in the two, but relating to the same subject.

THE WITNESS: I presume it was the same thing. I presume the President acted. Of course you will see, as I said the other day, that concerning some questions of policy in the early history of the Corporation we were not in entire accord. I do not question the motives of anyone, but the ideas of some of our people, some of the old regime concerning questions of policy, were too narrow. The idea of making the most money that could be made, even by taking advantage of conditions and the misfortunes of others, never appealed to some of us, and yet it was believed by people in earlier years to be good business.

By MR. DICKINSON:

Q. Now, you checked that, I understand?

A. I endeavored to check it. In earlier years I did not check it as much as I would like to have done, I sometimes gave in to some extent; I assented to things or allowed things to go to some extent in earlier years, I must admit.

Q. If you had fallen in with it in full sympathy at this time what would have been the effect?

A. If I had fallen in with it we would have bought pig iron probably at a higher price and earlier than we needed it, and it would have had the effect of higher prices for semi-finished steel products; in other words, it would have had a tendency to establish a fictitious market for what I would consider improper and unfair purposes. Of course, I give you the facts; you

may make the best of them, that is all; I cannot change the facts.

Q. I will proceed with the meeting of May 26, 1903:

"Present: Messrs. E. H. Gary, Chairman; C. M. Schwab, Charles Steele, James Gayley, E. C. Converse.

* * * *

"PURCHASES OF PIG IRON.

"The President reported the purchase of about 40,000 tons from the Valley Furnaces and 30,000 tons from Mr. Snyder at $18.50, with the privilege of cancelling any portion not shipped by the 1st of October. The President stated that he believes the purchase at this time has been a very wise thing."

So the purchase, it appears from that, was made at $18.50?

A. Yes.

Q. That was higher than the price you indicated you would be satisfied with?

A. I have no doubt I was dissatisfied with that, and in later years prevented it.

Q. Now, I call your attention to this question of policy of these subordinates, and to Government Exhibits, Volume II, page 508, a meeting of the Carnegie Steel Company, November 13, 1905. The only part I will read is on page 509, unless you want something preceding read.

MR. LINDABURY: We will see what it is.

MR. DICKINSON: The part I will read is this, and then I will read any other part you want:

"Mr. Dinkey: * * * It has always been the opinion of this Board (and I think of everyone connected with the Corporation) that Carnegie Steel Company should be a buyer of pig iron, so as to assist in controlling the price."

Who was Mr. Dinkey?

A. He was President of the Carnegie Steel Company.

Q. What position does he hold now?

A. The same position.

Q. And has held that position right along?

A. He has.

Q. And Mr. Corey was President at this time?

A. President of the United States Steel Corporation.

Q. In 1905?

A. Yes. I want to say that there was no justification whatever for that statement of Mr. Dinkey. It did not reflect the policy or views of the United States Steel Corporation.

Q. How about Mr. Corey's views and Mr. Schwab's?

MR. LINDABURY: Mr. Schwab was not connected with the Steel Corporation at that time.

THE WITNESS: I think those had been Mr. Schwab's views, and I think probably at that time they were Mr. Corey's individual views.

By MR. DICKINSON:

Q. How about the views of the Board of the Carnegie Company, excepting yourself?

A. That I cannot answer.

Q. You cannot answer that?

A. No; when questions of policy were involved the opinions of the boards of the subsidiary companies did not have any weight or effect, except perhaps as to the individual action of the officers of those companies at times when, as in the early years, sometimes they did act without the knowledge of the United States Steel Corporation officials. It has been stated here in the testimony that in earlier years there was some disagreement between myself and some other officials of the Corporation concerning certain questions of policy. That grew out of the fact that Mr. Schwab and Mr. Corey had been brought up in the steel business under different circumstances and had notions which were not in accordance with the known notions of those who controlled the United States Steel Corporation. I certainly have no intention of trying to say anything personal concerning any of these men, but I want it distinctly understood that these notions expressed by these gentlemen in those days, which might have been in accordance with the views of what I call the old regime, are not and never were the views of those who controlled the policies of the United States Steel Corporation. That is an answer to your previous two or three questions, and what you have read.

Q. You speak of the known views and ideas of this old regime——

A. No, you have not got that quite right.

Q. What?

A. That word "known" related to the policies of the Steel Corporation.

Q. Well, you knew of the previous policies of the Carnegie Company and you also knew of the views of Mr. Dinkey and Mr. Schwab and Mr. Corey and Mr. Gayley.

MR. LINDABURY: At what time; as they developed them or at the time of the formation of the Corporation?

MR. DICKINSON: Well, yes; at the time of the formation of the United States Steel Corporation and during the period covered by these minutes that I have been reading from the Carnegie Company.

THE WITNESS: I did to some extent. You remember the testimony of Mr. Schwab the other day in this court room, which was very frank, wherein he said that he withheld from me certain information. He believed he was right and thought he was justified. I would think I knew exactly what our people were doing, but in earlier years I did not always know. A question would come up for discussion before a committee, for instance, or it would come up in my office, when the president would be consulting me, and I would decide the question in the negative, and supposed that settled it for all time; but perhaps some time in the near future the question might come up again and I would not be consulted the next time, and action would be taken in accordance with the view of some one else. It took us some time to eradicate some of the things which our committee believed were wrong.

By MR. DICKINSON:

Q. But you took no steps, you or those who had the same ideas of policy that you did and were prominent in the Corporation, to find out from the examination of the minutes of the subordinate companies what they were actually doing?

A. Well, Judge, I did not know in those years that they kept this kind of minutes. I do not consider those conversations that the Carnegie directors had in earlier years minutes

that are natural or proper minutes of a board of directors, and I did not suppose they were putting into what they called minutes conversations like you produced here.

Q. You did not think they were making a record of them?

A. I am very glad you have them, though.

Q. We certainly are. You did not know they were making a record of that sort?

A. No, I did not. I did not know they were talking in that way, is what I mean to say.

Q. Well, the fact is, you did not know what they were doing, as shown in the minutes, did you?

A. Not all in the beginning.

Q. And you did not know anything about the minutes, did you?

A. Well, when?

Q. Well, up to 1904, say, or 1905.

A. I did not know anything about those records.

Q. How about the other subordinate companies?

A. Some I did and some I did not.

Q. Now, which ones did you know about, the National Tube; did you keep up with their minutes?

A. I think I knew the National Tube after the first two or three years; I should think so.

Q. After the first two or three years of their minutes?

A. Yes.

Q. How about the American Steel & Wire; did you know what they were doing, as shown by their minutes?

A. I think so; certainly after the first two or three years.

Q. But this Carnegie Company, that had been carrying on such extreme character of competition, you did not keep up with their minutes at all?

A. Well, you characterize their competition.

Q. I have not put it quite as strong as you have; I have modified it a little.

A. Well, they said a good many things that I would not approve of, I must admit that; and it was because some of these things would occasionally crop out, that commencing perhaps about 1904 I began taking very active steps to eradicate everything I believed wrong and not in accordance with

what were the determined policies of the Steel Corporation from the beginning.

Q. Do you know anything about the policy of Mr. D. G. Reid in respect of the lines of competition and attitude of the Corporation that you have been speaking of?

A. I do not know much about it, Judge.

Q. How about Mr. Converse?

A. I don't know much about that. I know the executive committee was abolished about 1903.

Q. How about Mr. Edenborn, what was his pronounced attitude, if any, on this question of the policy of the Corporation, as was indicated to you?

A. May I give you my impression?

Q. That is what I am trying to get.

A. I think generally the leading men in the iron and steel business, which would include the gentlemen you have mentioned, had notions concerning the management of corporations and the treatment of competitors and others that are considerably at variance with the policies of the Steel Corporation from the beginning, from the time of its organization, and the policies as carried into effect certainly for the last eight years or more. Now, the trouble is, it is rather embarrassing for you to compel me by your questions to say this, because I dislike to——

Q. (Interposing) It is not embarrassing me, Judge, not at all.

A. I know, but it is me, because I dislike to criticise anyone, any individual.

Q. I am not asking for criticisms?

A. It amounts to that when I give you my views.

Q. Well, the facts I want, Judge, are these: Name those of the members of the Executive Committee of the United States Steel Corporation who from the time when you started upon the policy that you have indicated as being that of the Corporation were with you in that view; we will first take up Mr. Edenborn. I believe I asked you about him and Mr. Converse and Mr. Schwab and Mr. Gayley. Were their views in full accord with you in the beginning?

A. I do not think they were all the time.

MR. SEVERANCE: Pardon me. You said Mr. Gayley. He was not on the Executive Committee.

MR. COLTON: He was in that pig iron raising business.

THE WITNESS: Part of the time, but not from the beginning, but for a short time.

Q. Who did compose the Executive Committee?

A. You have the names there, in addition to those you have stated.

Q. Mr. Roberts?

A. Mr. Roberts.

Q. Who else?

A. Mr. Steele, for a short time, and Mr. Perkins for a short time.

Q. Are you sure about the Executive Committee?

A. Yes, I think so. I think the chairman of the Finance Committee was ex officio a member of the Executive Committee, and when Mr. Perkins became chairman of the Finance Committee he then became a member of the Executive Committee, and I think he met on some occasions before the committee was abolished.

MR. SEVERANCE: Look at page 964, of Volume III. There is a meeting at which Mr. Perkins and Mr. Steele were present.

MR. DICKINSON: I am looking further back than that. April 9th, 1901, Volume II, page 557.

THE WITNESS: That is when we first started.

By MR. DICKINSON:

Q. The Executive Committee here shown is composed of E. H. Gary, chairman; C. M. Schwab, D. G. Reid, William Edenborn, E. C. Converse and Percival Roberts. Which of those whom I have named there coincided with the policies that you have spoken of of fostering competition and absolutely fair treatment of competitors?

A. Well, of course I have not characterized their action or disposition as you charactertize it. You have referred to certain things in the testimony this afternoon like purchasing pig iron to sustain the market and some other things. I do not think Mr. Converse or Mr. Reid or Mr. Edenborn or Mr.

Schwab had exactly the same notions that the rest of us had concerning some of these things.

Q. That only left you and Mr. Roberts of that first committee?

A. That is about right. Mr. Steele was on the committee, I think a member of the committee, but he did not attend very much.

Q. Then of those who attended how was Mr. Roberts?

A. Mr. Roberts always stood with me as I remember it.

Q. So you and he were in the minority. How long did you continue that way? I do not mean in power, but I mean in numbers?

A. If you follow the minutes you will find at a pretty early period, I cannot give you the exact date, but not a very long time after the Steel Corporation was formed I neglected to call any meetings of the Executive Committee. I did not have any, and we did not have any.

By Mr. Lindabury:

Q. You did not mention, perhaps you overlooked it, that Mr. Bacon was also on that committee.

A. He was on at the start because he was chairman of the Finance Committee.

By Mr. Dickinson:

Q. He don't seem to have attended any of the meetings.

A. He attended some of them. Mr. Bacon was of course very favorable to me. These three gentlemen, Judge Dickinson, actually believed that they were doing no wrong in their decisions, you understand.

Q. I understand.

A. It was a question of opinion.

Q. Yes, and of policies and methods.

A. Yes. I remember making a statement to the Executive Committee, for instance, very early in the history of the Corporation to the effect that if this Corporation was to survive, was to continue in existence, it must be on the basis of so conducting itself that no one had any good reason to complain of its management, and that was my disposition and my effort, and I was sustained fully by a member of the

Executive Committee and by the Finance Committee, who determined really the policies of the Corporation, and eventually, by everyone, and by that I do not mean to take any credit to myself for originating this idea or insisting upon the idea.

Q. Who did originate it, Judge?

A. Let us say all of us. All of us who finally succeeded.

MR. LINDABURY: He did not say he did not originate it; only that he did not want to take the credit.

By MR. DICKINSON:

Q. I am asking who originated it.

MR. LINDABURY: He said "all of us."

MR. DICKINSON: The Judge is modest.

THE WITNESS: I do not want to be over-modest.

By MR. DICKINSON:

Q. Then who did originate this policy of fostering competition and so maintaining the policies of the Corporation as to develop trade and foster competition and prevent wrong and imposition of any kind?

MR. LINDABURY: He has answered it.

MR. DICKINSON: How?

MR. LINDABURY: He said "all of us."

THE WITNESS: I was one of them.

By MR. DICKINSON:

Q. Who were the others that originated that, Mr. Schwab?

A. Mr. Schwab today, I think, is as clearly convinced of the necessity, from a business standpoint, and every other standpoint, of doing all that I can claim was the intention of the U. S. Steel Corporation concerning proper and decent treatment.

Q. He is a well-behaved competitor, is he?

A. Well, the tone of the iron and steel industry in this country has very materially changed for the better, Judge Dickinson, I believe.

(Whereupon an adjournment was taken until Wednesday, June 11, 1913, at 10:30 o'clock a. m.)

SEVENTY-THIRD DAY.

EMPIRE BUILDING,
71 Broadway, New York City,

Wednesday, June 11, 1913.

Before SPECIAL EXAMINER HENRY P. BROWN.

Present on behalf of the United States, MR. DICKINSON and MR. COLTON.

Present on behalf of the Defendants, MR. LINDABURY, MR. SEVERANCE, MR. BOLLING and MR. REED.

ELBERT H. GARY,

the witness under examination at the taking of recess, resumed the stand for further examination.

CROSS EXAMINATION (Continued),

By MR. DICKINSON:

Q. Judge, on Monday we took up the personnel of the Executive Committee and the antecedents of some of them, and the views of a majority of them in respect to policies affecting competition, which you did not approve.

A. Judge, would that be a majority?

Q. I thought that we arrived at that. At any rate, however, I will say some of them. Am I correct or not that the highest authority on matters of policy respecting competition was vested in the finance committee?

A. No; not at that time.

Q. When did it become vested with it?

A. When the executive committee was abolished, in the summer of 1903, probably in August.

Q. You did have a finance committee, however, in 1903?

A. Yes; but by the original by-laws the finance committee had all the power of the board of directors concerning all financial matters, and the executive committee all the powers of the board of directors when not in session concerning other

matters, operating, manufacturing affairs, and so on. Judge Dickinson, if the executive committee approved the installation of any work or the purchase of any property, if that involved the payment of money, the question had to go before the finance committee for its approval before being acted upon.

Q. It did, however, take up questions of purchasing property that might involve competition? The finance committee did that, did it not?

A. It did. It did take up the question of purchasing property.

Q. And even if properties belonged to concerns that were selling, if there were such, in competition with the United States Steel Corporation, the finance committee would pass upon the question of purchase, would it?

MR. LINDABURY: One moment. That question assumes that they did consider the purchase of properties that were being used to compete with the Steel Corporation.

MR. DICKINSON: I do not think you caught the question.

(By request the stenographer repeated the pending question.)

MR. LINDABURY: I object to that because it is framed in such a way as to make an answer, either yes or no, misleading. It is very much like the question asked a man as to whether or not he had stopped beating his wife. He dared not say yes or no.

THE WITNESS: If I give you the fact, perhaps neither one will object.

MR. DICKINSON: Just do that, Judge, please.

THE WITNESS: In those days the finance committee had, as ever since it has had, the right to pass upon the question of expenditures; but at that time the finance committee would not consider any other question; that is, if the question of competition was involved, I do not think the finance committee at that time would take it up or be informed in regard to it, because that, perhaps, would be transcending its jurisdiction at that time.

By Mr. Dickinson:

Q. On January 20, 1903, Government Exhibits, Volume II, page 594, there is recorded a meeting of the finance committee; present, Messrs. Perkins (in the chair), Gary, Frick, Bacon, Rogers, Ream and Widener. The initials are not given here. Is that Perkins Mr. George W. Perkins, who at that time and since was connected with the Harvester Company?

A. I know of only one George W. Perkins, and he is the man.

Q. Was he then connected with the Harvester Company?

A. What is the date?

Q. January 20, 1903.

Mr. Lindabury: I object to the question as to Mr. Perkins' connection with the Harvester Company as quite irrelevant for the legitimate purposes of the case.

The Witness: I think he was. Will you give me the page to which you are referring?

By Mr. Dickinson:

Q. Page 594 of Volume II, Government Exhibits.

A. I have it.

Q. The next name mentioned is Gary. That is yourself, is it?

A. Yes.

Q. Then the next is Frick. Is that Mr. Frick who had been with the Carnegie Company?

A. Yes.

Q. The next is Mr. Bacon. Is that Mr. Bacon of J. P. Morgan & Company?

A. Yes; then of J. P. Morgan & Company.

Q. The next is Rogers? What Mr. Rogers was that?

A. H. H. Rogers.

Q. Of the Standard Oil Company?

A. Yes.

Q. The next is Ream. What Ream is that?

A. Norman B. Ream.

Q. Was he with the Harvester Company?

A. Well, he has been——

Q. (Interposing) Was he a director, then, of the Harvester Company?

A. I am not quite sure. He may have been. He certainly has been since, although he resigned some time ago.

Q. But he was for a long period connected with them?

A. Yes, he was.

Q. Then the next is Widener. What Mr. Widener is that?

A. Mr. Peter A. B. Widener, of Philadelphia.

Q. Is that the Widener that was connected with the so-called Tobacco Trust?

MR. COLTON: One of the defendants in that case.

MR. DICKINSON: Yes, one of the defendants in that case.

MR. LINDABURY: I object to that. There is not any jury here, Judge.

MR. DICKINSON: No.

THE WITNESS: I do not know of his connection with the Tobacco Trust. It is the only P. A. B. Widener I know of.

By MR. DICKINSON:

Q. You do not know if he had any connection with the tobacco interests?

A. I do not know; no, I do not.

MR. LINDABURY: I object to this as irrelevant.

THE WITNESS: I do not mean to say that I have not heard that he was a stockholder and had some of the stock of the Tobacco Company, but whether he was connected with it I do not know.

By MR. DICKINSON:

Q. On page 595 the following is recorded:

"Oliver Ore properties. The purchase of the Oliver ore properties was referred to Mr. Frick with power to close. As one of the conditions of this purchase Mr. Frick stated that Mr. Oliver and Mr. Congdon would agree to keep out of the ore business except in the interest of the United States Steel Corporation."

Do you recall whether or not that was a fact?

A. I do not.

Q. You know of the purchase of the Oliver ore properties?

A. I do.

Q. You know it was authorized by the finance committee?

A. I do.

Q. You know that as a part of that transaction Mr. Oliver and Mr. Congdon agreed that they would keep out of the ore business?

A. I do not.

Q. Do you know the contrary?

A. No, I do not. I suppose you have the papers. I doubt if that was in the papers, but I may be mistaken.

Q. I have only this record here of the action of the committee at a meeting at which you are recorded as being present.

A. I remember we were negotiating for that property at that time, but without much success, and finally Mr. Frick reported that he knew Mr. Oliver very well, and perhaps could make a bargain with him, and that he went South and met Mr. Oliver at Palm Beach, I think, and closed the price. The only thing that was involved, I knew, was the price, and afterwards we took a lease of the property.

Q. You knew Mr. Oliver and Mr. Congdon?

A. I knew Mr. Oliver quite well.

Q. You knew who Mr. Congdon was?

A. He was a practicing lawyer, wasn't he?

Q. Was not he identified, and had he not been for a long time, with the ore business?

A. I do not know that; I did not know him very well.

Q. You knew Mr. Oliver was one of the most experienced men in the ore business at that time?

A. No, I would not say that. Mr. Oliver did have more or less charge of the purchases of the Carnegie ore properties, and I think his firm had a sixth interest in the properties, but I would not say that he was an experienced ore man.

Q. Not an experienced ore man?

A. No.

Q. The Carnegie Company had large ore properties, had they not?

A. Yes.

Q. And hadn't Mr. Oliver practically bought all of them for the Carnegie Company, made their purchases for them?

A. I think he did; I think he had been largely connected with them.

Q. Wasn't the Carnegie Company one of the largest holders at that time of ore properties of any manufacturing corporation?

A. At the time the Olivers finished the business?

Q. At the time it went into the Corporation?

A. I should think so, yes. Mr. Oliver was a very adroit bargainer, so to speak.

Q. You expressed some views on the general question of fostering competition. Now, as you have used that expression in your testimony, I will ask you whether or not in that sense you regard the purchase by the United States Steel Corporation of the property of a competing concern, coupled with a contract that the vendors were to agree not to compete with the Steel Corporation, as fostering competition?

MR. LINDABURY: I object to that question because it does not appear that the owners of the Oliver properties were competing with the Corporation, nor does it appear that the Corporation took any contract from those owners not to compete in the future. All that appears is that in offering the sale of the property they threw in the offer stated in the minutes.

MR. DICKINSON: The question is asked without reference to the Oliver ore properties, but is a general question to get an understanding of the use of the term "fostering competition" as used by Judge Gary and as applied to that character of transactions.

Now, will you have the question read to you again?

THE WITNESS: I think I understand it.

MR. LINDABURY: I desire now, upon that explanation of counsel, to object to it further as a mere inquiry into economic or governmental principles, and the witness's views upon that point.

MR. DICKINSON: My purpose is to delimit exactly what the Judge meant when he used that term, because I want to get the scope of his testimony on that subject fairly, and I want an understanding of the term as he used it.

(The pending question was repeated by the stenographer.)

THE WITNESS: Of course I should think that would depend entirely on circumstances, Judge Dickinson. It would seem to me if the purchaser of any commodity or business, as a part of the contract, should secure an agreement from the seller that he would not enter into competition concerning that business, it would be perfectly proper and in many circumstances would not tend to restrict competition.

But I will answer your question further, that if the quantity of ore was very limited, and the United States Steel Corporation should buy such a part of that as to make it impracticable for others to secure ore, and should as a part of their contract, insist upon an agreement with some one who had special opportunities and special privileges that he should not purchase any more ore or be interested in securing any more ore, that would not be fostering competition. I have tried to make that as liberal to your side of the question, as I understand it, as I possibly can.

Q. I understood you to say, however, that if they bought any business and secured a contract obligating that party not to carry on that particular business in competition, it would not in your judgment be contrary to the principle of fostering competition?

MR. LINDABURY: Not ordinarily, he said.

THE WITNESS: I would not go any farther than I think the courts have gone in sustaining contracts of that kind. Of course every case must depend upon its own circumstances.

By MR. DICKINSON:

Q. What I was trying to get, Judge, is what you meant by the term "fostering competition," as applied to a case. Now, I will put it this way: Suppose people in a particular business or particular branch of the iron and steel business should sell out to a subsidiary of the United States Steel Corporation or to the United States Steel Corporation itself, would you regard a contract that they were not to compete at all in any line of business engaged in by the Steel Corporation as fostering competition, in the sense in which you have used that term?

A. I must answer that, Judge, by saying that it would depend entirely upon the circumstances. If you will give me the circumstances surrounding any particular purchase that the Steel Corporation ever made, I will give you my best judgment in regard to it.

Q. The proposition I have put to you there was: Suppose the agreement to stay out of competition is broader than the line of business embraced in what is sold and which the vendee is seeking to protect?

A. Even then it would depend upon circumstances, of course.

Q. Now, I will put this case to you——

A. (Interposing) In my statement, Judge, I used the expressions indulged in by me in the meaning ordinarily attached, having in mind the real substantial effect of what was done. I think I know what is practically restraint of competition and what is not. I am not endeavoring to deal in legal abstruse propositions at all.

Q. While we are on this question of your ideas on that subject, you referred to an opinion given by Judge Hoar. When did that first come to your knowledge?

A. I cannot tell exactly.

Q. Down to what time did you rely on and accept that as being a satisfactory exposition to you of the law?

A. I do not know that was a satisfactory exposition of the law to me. I have said that it had a marked influence on the men engaged in the wire industry. For instance, as you know, Senator Cummins was the counsel for the Washburn & Moen people for a good many years, and when I testified before the Senatorial committee, I called his attention to that opinion and he said he had read it. I know by conversations with the wire people that they believed they had a right to do that. Personally, so far as I know, I have never approved of a contract just like that, but I do not want to modify at all what I said about the rail business, of course.

Q. But, Judge, you spoke of the Hoar opinion. You were engaged at one time in the formation of the Consolidated Steel & Wire, were you not?

A. Yes; in trying to get together some of the wire companies.

Q. The American Steel & Wire of Illinois?

A. Yes.

Q. At what time was that formed?

A. That was formed, as I remember, in March, 1898.

Q. Now, you referred to the Hoar opinion. Was that at that time accepted by you or did it influence your judgment in regard to what you were doing at that time?

A. No, I do not say that it did. I do not think so. I did not consider at that time the putting together of the few companies that went into the American Steel & Wire Company of Illinois contrary to the Sherman Act, and I do not believe the members of the bar generally at that time did. That is a different question from the question of making contracts to divide territory and restrict output and fix prices, and so forth, as I regard it. I think lawyers generally, including myself, I will say, relied very largely in those days upon the decision of the United States Supreme Court in the Knight case, with which you are familiar.

Q. When was that rendered, do you know?

A. I do not, but it was certainly prior to 1897, some time prior, I think; you can give the exact date.

Q. I haven't it in my mind now.

A. It was prior to that time, I believe, and think that it is the concensus of opinion of the bar generally that the principles of that case have been since modified by the Supreme Court of the United States, but whether that is true or not I am giving you the state of my mind in those days to the best of my ability and recollection.

Q. Did you at any time accept as an expression of the law the Hoar opinion, and up to the time you introduced it in your evidence I want to know what figure it had, if any, with you.

A. I think, Judge Dickinson, that that opinion which I had not read at that time, I believe——

Q. At what time?

A. In 1897—affected my mind or would affect my mind—I will say did affect my mind.

Q. At that time?

A. At the time the arrangement was made with Mr. Carnegie, to which I have referred. I did not think at that time that arrangement was tainted with illegalities.

Q. You mean that arrangement in regard to the sale of rails?

A. Yes, although I have changed my mind since.

Q. Now, I want to get back to the time when you formed the Consolidated Wire, or were engaged in that, and the American Steel & Wire of Illinois, whether the Hoar opinion affected you at that time?

A. I do not think it did. I won't say that it did. I have no recollection on the subject, but I cannot see now that it would have affected my mind.

Q. At that time?

A. No.

Q. But did, later, you say?

A. I distinguish between putting together——

Q. (Interposing) I understand.

A. (Continuing)—the consolidation of different companies, the combination of a few companies, like the American Steel & Wire of Illinois, and making a contract such as the one Senator Hoar pronounced to be perfectly legal under the Sherman Act.

Q. So it did affect your mind when you entered into the arrangement with the Carnegie Company and—who was the other party to it? There were three of you, I believe, were there not?

A. Well, that calls for a specific recollection, and I cannot tell you.

Q. It was the Carnegie Company, the Illinois, and after that, I believe you said the Cambria came in, and the Colorado?

A. I cannot say specifically that it did.

Q. You said you thought they signed the paper afterwards, I believe?

A. Who?

Q. The Cambria and the Colorado.

A. I think they did. I think the presidents of those com-

panies put their names on that paper. Whether they did or not, the business was done as though they had put them on, and I think they did.

Q. Then I understand you, Judge, to say that in respect to that transaction the Hoar opinion did influence your judgment?

A. Well, of course that calls for recollection. I cannot tell; I cannot answer. I do not remember.

Q. I thought you said a while ago that it did.

A. I started to add, and I should have added, that it would have. I am not sure, looking back at it now. If I had examined that opinion as carefully as I have since, I think it would have affected my opinion. I do not care to be more specific than that, because I might be mistaken in recollection. That is the reason.

Q. And you do not know whether you had seen it at that time?

A. No; I cannot say that, even.

Q. Then what significance did the Hoar opinion have in connection with any matters that you acted upon prior to the formation of the Steel Corporation?

A. This effect; that I know very well some of the wire people stated to me that they had a perfect right to make this kind of contracts, and had that advice from their counsel; and I knew perfectly well that Senator Hoar was their counsel at different times.

Q. When were those statements made?

A. It seems to me they were made during the winter of 1897. I might be mistaken in my recollection, Judge. I do not want to be more specific than I actually can.

Q. Did you put any reliance upon that statement? Did that influence your conception of the law?

A. At what time?

Q. At the time you heard those statements?

A. I cannot answer that any more specifically than I can, because I have no recollection in regard to it.

Q. Then, Judge, can you say that at any period, in respect to any matter, having a knowledge of the Hoar opinion, either

directly or by reports such as you have given, it influenced your mind? If so, state when and in respect of what.

A. You mean to ask me if I can now remember specifically that it did; and I must answer your question in the negative.

Q. Then you do not know whether the Hoar opinion cut any figure with you at all at any time?

A. I do not know from positive recollection, no. If I could remember it I would tell you, but I cannot.

Q. Coming back to the matter of contracts, of which we were talking when we made this digression about the Hoar opinion, I call your attention to the contract with the Union Steel Company, which appears in Volume IV, Government Exhibits, page 1574, *et sequitur*.

In the first paragraph, it appears on page 1574 that this contract was made between the United States Steel Corporation, party of the first part, and Mr. A. W. Mellon, R. B. Mellon, W. H. Donner, William Flinn, George W. Darr, John Stevenson, Jr., and J. P. Whitla, hereinafter called the vendors, parties of the second part. And in that paragraph the Steel Corporation is designated as the Steel Company.

Turning over to page 1580, paragraph tenth reads as follows:

"The vendors severally agree with the Steel Company that they respectively will not within the United States or the Dominion of Canada for a period of ten years from December 1st, 1902, engage directly or indirectly in the manufacture of iron or steel or articles made therefrom now manufactured by the Steel Company, the production of furnace coke, or the mining or production of iron ore, except in the Territory of Arizona and the State of Florida, excepting, however, from the terms hereof the enterprises, if any, in which such parties may now respectively be engaged."

You knew those gentlemen, Judge Gary, did you?

A. I knew some of them.

Q. Was not the United States Steel Corporation, through its various subsidiaries, engaged in the manufacture of iron and steel or articles made therefrom, which these parties were

not at that time engaged in; that is, were there not a large class of products——

A. I should say yes.

Q. Then this embraced a wider field in respect of competition than those men at that time were engaged in? Did it not?

A. Of course the language speaks for itself. You do not care to have me construe the language?

Q. All right.

A. May I say this about that contract?

Q. Yes; anything you choose, Judge.

A. This contract was drawn by Judge Reed's law firm, of which Mr. Beal was a member. The fact that they drew the contract representing both sides, the purchasers and the sellers, would certainly make me more careless in the examination of the paper. I have no recollection of having my attention called to that provision at all. By that I do not mean to express any opinion as to what I would have said about it if my attention had been called to it, because I do not know; I do not remember.

Q. Didn't you sign the contract?

A. Yes, I signed it as Chairman of the Executive Committee.

Q. You do not claim that you did not read it?

A. I am afraid I did not read it, Judge.

Q. Do you mean to say that the contract did not express the intent of the parties, and that the lawyers put in there something without authority?

A. I do not mean to say anything about that except what I have said.

Q. That is to say, you individually did not have your mind pass upon that particular feature; is that it?

A. Yes, I mean to say that, because I do not remember in the conversations or negotiations that anything was mentioned about that.

Q. But do you remember that you disapproved of that particular feature?

A. I do not; I have no recollection on the subject whatever.

Q. Now, we will come to another matter, somewhat similar in character. Government Exhibits, Volume II, page 559; a meeting of the executive committee April 22, 1901:

"Matter of Settlement With Mr. Reis:

"Referring to the matter of settlement of contract with Mr. Reis, it was agreed that the president be requested to carry out the settlement as heretofore agreed upon with Mr. Reis, providing Mr. Reis will agree not to engage in our lines of business during the next three years; otherwise to postpone settlement."

Who was Reis?

A. I do not remember anything about that minute or the action of that meeting, but I do remember something of the transaction that I suppose that refers to. I am willing to state that to you, if you want that.

Q. Who was Mr. Reis?

A. William E. Reis had been president of the National Steel.

Q. And there was a matter of settlement pending between your company and him, was there, about something?

A. Yes, there was a settlement. There was a question presented by him. He asked for special consideration. I have no objection to telling you exactly what it was, if you care for it.

Q. I do not know that I care for it. You can tell it if you want to.

A. I do not care anything about it. Nobody would object to it.

Q. What business had Mr. Reis been engaged in, so far as iron and steel products are concerned?

A. Well, he had been connected with a company at New Castle, Pennsylvania, portions of which were taken over by different other companies, and when the National Steel was organized he became president of that company and I think was president of it at the time it was taken over by the United States Steel Corporation. That was some time after that, as I remember.

Q. Were the lines of business that he had been engaged

in commensurate at that time with those which the United States Steel Corporation was engaged in?

A. No.

Q. I call your attention to Volume II——

MR. LINDABURY: One moment, before you go further. I think in fairness to the case and to the Judge, since you have called attention to this matter, you ought to ask what that settlement was.

MR. DICKINSON: I told him he could say if he wanted to. If you want him to tell what it is, I do not object. I just did not want to fill up the record with what might be irrelevant.

MR. LINDABURY: I assume that you do not know what it was.

MR. COLTON: I have heard of it, but do not know definitely.

MR. DICKINSON: If counsel on the other side thinks it will be fairer to the case, just tell it.

THE WITNESS: I will give you the whole matter as I remember it.

MR. DICKINSON: Try to make it as brief as you can.

THE WITNESS: Mr. Reis had been president of the National Steel Company. Some time after the Steel Corporation was organized Mr. Reis, who had moved, or was about to move to New York—he had moved and he was living in New York, I am quite sure, before the United States Steel Corporation was organized; I may be mistaken about that, but he had moved, or was about to move—claimed that he was entitled to some special compensation because the National Steel was taken over during a term for which Mr. Reis had been elected president, and a settlement of his claim was finally made by the Steel Corporation paying him some sum of money in full satisfaction. I have no doubt he made that agreement.

By MR. DICKINSON:

Q. As set out here?

A. Yes, that he would not enter into business, but it is only fair to say that he spoke to me several times afterwards concerning having made some arrangement about his keeping out of business, and asked if I had any objection, and I

told him no. I am very sure he will remember that and testify to it.

He came to New York and went into other kinds of business and has lived here ever since.

Q. Mr. Reis had been engaged in some branches of the iron and steel business?

A. He had been president of the National Steel.

Q. He had a claim against your company which was disputed?

MR. LINDABURY: The nature of the claim was for salary for the unexpired term.

MR. DICKINSON: I will put it that way.

By MR. DICKINSON:

Q. He had against your company a claim in the nature of a claim for salary for an unexpired term and there was a controversy about it, and you settled that controversy with him upon condition that he would not engage in any of the lines of business which the United States Steel Corporation at that time was carrying on.

A. I think I can answer that in the affirmative.

MR. LINDABURY: And I think you ought also to say that the term of three years was correspondent with the term of his employment.

MR. DICKINSON: He has not shown that.

MR. LINDABURY: No matter, I am perhaps asking too much of you. We will prove our case ourselves, without asking you to do it.

Q. Judge, I call your attention to Government Exhibits, Volume II, page 599, contract between the United States Steel Corporation and the Crucible Steel Company. On page 599 appears the following:

MR. SEVERANCE: Which committee is that?

MR. DICKINSON: This is the finance committee.

By MR. DICKINSON:

Q. (Continuing) "That the leading interests are not to engage in competitive business. That Mr. Snyder will be

connected with the management of the Clairton properties during the pleasure of this Corporation on a salary to be fixed by agreement or by Mr. Frick if officials cannot agree, and while so connected will not engage in competitive business."

Was not that agreement that they were not to engage in competitive business put in with your sanction?

A. Judge, will you allow me to say this proposed contract was never executed; it was abandoned. I do not remember about that particular feature. I have no memory on the subject whatever.

MR. LINDABURY: You, by inadvertence, Judge, spoke of this as if it were a contract; at least I assume you spoke inadvertently. It seems to be a report of some special committee.

By MR. DICKINSON:

Q. Who had charge of that contract and the negotiation of it?

A. I did, more or less.

Q. Were not you the sole committeeman that did have charge of it?

A. Perhaps I was at that time; I think that is so.

Q. That was put in, then, with your sanction, was it, whether the contract was executed or not?

A. Of course, if you ask me to infer, I can answer that question; I have no recollection on the subject.

Q. But being the sole committeeman, what would you say? It appears on page 598: "Judge Gary, as Special Committee," had this matter in charge.

A. I was trying to remember something about it, Judge.

Q. All right.

MR. LINDABURY: It was Judge Gary and Mr. Frick, you will see by the latter part of that minute of March 17th.

THE WITNESS: I think I ought to answer to Judge Dickinson that I believe in the talk with Mr. Snyder it was agreed that he should enter our employ, he should have charge of this property, he was to receive a salary, and during that time he was not to enter into competitive business.

By Mr. Dickinson:

Q. "And that the leading interests were not to engage in competitive business," that is the expression.

A. I think that only referred to Mr. Snyder. My negotiations were had with him, and I believe he had sole charge of this at that time.

As I stated the other day, he had developed by practice the ability to use exclusively the Mesabi iron ore in the furnaces. He claimed credit for that, and we believe it was valuable.

Q. I call your attention to page 598, where it appears that the Crucible Steel was to retain 35 per cent. and Mr. Snyder 10 per cent., and that the negotiations were conducted with W. P. Snyder and Chairman Miller of the Crucible Steel. Please look at that and state whether or not you still believe that the "leading interests" in that clause referred to Mr. Snyder alone, and did not embrace the Crucible Steel.

A. Where is Mr. Miller's name mentioned?

Q. Page 598, at the bottom.

A. My negotiations were entirely with Mr. Snyder. I do not know what Miller that is. His full name is not given.

Q. Chairman Miller of the Crucible Steel Company.

A. I think that was a nominal position, and I still think Mr. Snyder was the leading interest, and I do not believe Mr. Miller would have been any factor of the Crucible Steel.

Q. This was a report of a special committee, was it not?

A. Yes.

Q. Doesn't this report show that the Crucible Steel was to retain 35 per cent., and that Chairman Miller represented the Crucible Steel in the negotiation?

A. The Clairton was engaged in a different line of business.

Q. Will you please answer the question?

A. May I have it read?

(The stenographer thereupon read the last question, as follows:)

"Q. Doesn't this report show that the Crucible Steel was to retain 35 per cent., and that Chairman Miller represented the Crucible Steel in the negotiation?"

A. Yes, the report shows that. I have no recollection of seeing Mr. Miller, if it is the one I suppose it is.

Q. Do you have any recollection which contradicts the statement of that report?

A. No.

Q. When did the United States Steel Corporation first get into the seamless tube business?

A. Well, the National Tube was to some extent, although I would not think an important extent, engaged in the seamless tube business before the Shelby was purchased. I would say they really got into the seamless tube business when that was purchased. If you give me the date of that, then that will answer your question.

Q. It was authorized May 29th, 1901, and the contract was authorized June 20th, 1901.

A. I should suppose soon after the contract was executed the National Tube was in the seamless tube business. I think at that time there were only manufactured about 30,000 tons of seamless tube in the country per annum, in one year.

Q. Do you know how much the Shelby Company manufactured at the time you took it over?

A. No, I do not.

Q. Judge, are you speaking now, when you speak of its going into the seamless tube at that time for the first time practically, as of knowledge that you recall having been possessed by you at that time from your knowledge of the works that you then had and what they were doing and the character of it?

A. No, I do not. I speak of it from my knowledge of the business which I acquired day by day in due course of business. I was quite familiar with the business going on at that time and I knew perfectly well that the seamless tube business was one that was coming on, so to speak, to some extent, and the National Tube were very desirous of getting into it, and I heard them say from time to time something about the experiments they were making, and so forth and so on; just as you would know what was going on in your law office concerning matters that you personally did not actually have charge of.

Q. Did you form your impressions from which you have spoken from information that you got from the officers of the National Tube at that time?

A. I think so.

Q. Were you a director, then, of the National Tube?

A. I presume I was, but I have no recollection of that matter coming up before the Board of Directors of the National Tube Company, although I will not say that it did not. It came up before our executive committee, I am very sure.

Q. Did you ever examine the minutes of the National Tube during that period, say for six or eight months prior to taking over the Shelby Tube?

A. I do not think I did.

Q. How about their annual reports?

A. No, I do not think I did.

Q. You did not read the annual reports of your subordinate companies?

A. No, I do not think I did; I do not think I was as careful in those days as a director as I think I am now when I am a director. I believe we have all been stirred up to more careful attention to the affairs of corporations in which we are directors.

Q. In what touch as a director of the National Tube Company did you keep in respect of what they were doing and their transactions as recorded in their minutes?

A. At the present time?

Q. No; at that time, 1901.

A. I am afraid I did not pay very much attention. I was nominally a director of the subsidiary companies, perhaps all of them, at those times, but as such did not have much, if anything, to do with their affairs, because the leading questions, questions of policy or questions of large expenditures, would come before the committees of the United States Steel Corporation, where they would be considered, and where I attempted more or less to exercise my supervision and influence.

Q. In the matter of authorizing development of the business in a plant, did you know about those matters?

A. I knew something about those matters, but only, I

think, as they came before the executive committee. Mr. Converse was a member of the executive committee.

Q. In taking over the National Tube Company properties, what acquaintance did you have with the capacities of the concern at that time and what they were doing, say in the latter part of 1900?

A. I had considerable, in a general way.

Q. Did you know that in the latter part of 1900 the board had authorized the officers to continue the development of the seamless tube business at the Christy Park plant?

A. If I did, I have forgotten it. I may have known.

Q. Did you know they had a plant called the Christy Park plant?

A. I have no recollection in regard to it.

Q. Do you know what kind of machinery it was after that, and what kind of tubes it was intended to produce?

A. I have no recollection. I would think not.

Q. But I am asking you now for what you recollect, Judge. Do you know, of your own knowledge, whether or not at that time, the latter part of 1900, the bulk of seamless tubes was made by the Shelby Tube Company?

A. No, but I would think it was.

Q. I am asking now, Judge, what you recall as knowing.

A. I must answer no, then.

Q. Did you know, then, whom the directors of the National Tube Company regarded as the chief competitor of their company in the seamless tube business?

A. No; I would be surprised if they thought at that time they were strong enough to be competitors of anybody in that business.

Q. Did you know at that time anything about the Standard Seamless Tube Company?

A. Continuing my last answer, I wish to say that I mean by that the National Tube people.

Q. Yes, I understand. Did you know anything in 1900 as to the existing competition between lap-welded products and seamless tubes, at such prices as brought them into competition and use for the same purposes?

A. What date do you ask about?

Q. The latter part of 1900.

A. No; I would not think there was much competition between those two classes of tubes at any time.

Q. Yes, but I am asking now as to what knowledge you recall as having had?

A. I know in a general way.

Q. Do you know anything about a committee of the National Tube Company on or about December, 1900, having secured from certain stockholders of the Standard Seamless Tube Company an additional agreement for the acquisition of at least 90 per centum of the capital stock of that company?

A. I do not.

Q. Do you know anything about that committee examining the plant of the Standard Seamless Tube Company when in full operation and also looking into its patents?

MR. LINDABURY: Are you speaking of present knowledge or knowledge at that time, Judge? Sometimes you have asked for his knowledge as of that date. I am not sure which you mean.

MR. DICKINSON: I am asking if he knows now if he knew then; in other words, if he can testify as to anything about it.

THE WITNESS: I did not know then, and I do not know now that I did know then.

MR. DICKINSON: That covers it, surely.

MR. LINDABURY: I think you misunderstood me, Judge. I thought it was not clear as to whether you were asking——

MR. DICKINSON: I think it is clear now.

MR. LINDABURY: Yes. I thought it was not clear as to whether you were asking about his present knowledge or as to his knowledge at that time.

By MR. DICKINSON:

Q. Did you, at any time, know that at that time it was the belief of the committee to which I have referred, formed after such examination, that the acquisition of the Standard Seamless Tube Company, in connection with the company's Christy Park plant, would give a greater capacity than that of the entire Shelby Tube Company?

A. No.

Q. Do you know whether or not about that time President Converse of that company stated to the directors of that company that they had acquired a plant which would have a greater capacity than the Shelby Steel Tube Company, capitalized at $15,000,000, and whose plant represented an actual expenditure of about $7,500,000?

A. No.

Q. Do you know anything about information given to the President of the United States Steel Corporation by Mr. Miller of the Shelby Tube Company of the entire success of certain experiments that had been instituted at the request of Mr. Schwab, with a view of making a tube to compete with the lap-welded tube for pipe, as of about the period April 20th, 1901?

Mr. Lindabury: I object to that because it does not appear that any such information was ever given.

Mr. Dickinson: I am just asking if he knows.

The Witness: I do not.

By Mr. Dickinson:

Q. Have you any knowledge or recollection of any proposed combination or understanding between the National Tube Company and the Shelby people in regard to the question of prices of products, or sale of products?

Mr. Lindabury: As of what date?

Mr. Dickinson: About the same date, April 20th, 1901.

The Witness: I have no recollection of it.

By Mr. Dickinson:

Q. When did the purchase of the Shelby Tube Company come to your knowledge?

A. I cannot give you the date. I remember substantially what occurred in regard to it. It may have been referred to in the executive committee, but I do not remember the date. Statements have frequently been made there that did not impress me very much, particularly if no action was taken in regard to them, but I remember very clearly the Shelby property as being offered to us. I remember seeing the president of the company two or three times; I remember his

statements substantially in regard to it, and in regard to the pecuniary condition of the company. I think they were impecunious, and very hard up for money; they were very anxious to sell. I remember that distinctly, and we were anxious, or at least desirous, of getting into the seamless tube business successfully.

Q. I call your attention to a meeting of the executive committee April 20th, 1901, Volume II of Government Exhibits, page 558, and read as follows:

"The President reports advices from Mr. Miller of the Shelby Tube Company of the entire success of certain experiments instituted at the request of Mr. Schwab with the view of making a tube to compete with the lap-welded tube for pipe. Under the arrangement Mr. Schwab was to pay $25,000 for the experimental costs, for which he would be entitled to all information as to the process."

I will ask you whether you remember that?

A. I do not.

Q. (Reading): "The discussion then took the direction of the advantage or otherwise of a combination or understanding with the Shelby people. Mr. Converse stated that the Shelby and the National Tube Companies are the only makers of seamless tubing."

Do you recall what that combination or understanding was that is there referred to?

A. I do not.

Q. Do you know makers other than the Shelby and National Tube Companies of seamless tubes at that time?

A. I do not; I think Mr. Converse dignified the National Tube a little more than it was entitled to in his statement.

Q. Who was better informed about what they were making at that time, you or Mr. Converse?

A. Mr. Converse was better informed, and would be more enthusiastic in his statement of a question than I would, I think.

Q. Well, do you know any facts that you can state of your own knowledge contrary to that statement?

A. Well, I know this, Judge Dickinson, that at that time the practical men of the National Tube Company did not con-

sider they were making a success of the seamless tube. I know they were casting about and looking around to get hold of a patent, something that would enable them to get into that business. It was so natural for a man who was trying to get into a business, or had done something toward getting into it, to class himself with others who were in it, that I would not pay much attention to a statement of that kind.

Q. Do you know at that time that they did not have confidence in their ability to make seamless tubes?

A. I do not think the practical men did.

Q. But do you know?

A. I know from their statements.

Q. Who made the statement, and what statement did he make?

A. I cannot tell you that.

Q. Can you give any statement made by any man, giving the time and the substance of the statement to that effect at about that period?

A. I do not think I can specifically, no. My memory is not good enough to repeat conversations after that long time, but I know what was in the minds of the National Tube people very well concerning it.

Q. You spoke awhile ago of your understanding that the Shelby Tube Company was hard up?

A. They so represented themselves to be.

Q. In that connection I call your attention to this, on the same page, by the Chairman. That was you?

A. Yes.

Q. (Reading:)

"The Chairman suggested that inasmuch as we are entitled to this information regarding the new process, the president might say we would like to have it; that we would be glad to carefully consider the purchase of their company, it being clearly understood in advance that we were committed to no proposition, but for the purpose of knowing whether he would care to recommend, the president desired very full information as to the company and its business."

Do you recall your making that statement?

A. I do not recall it.

Q. Do you recall anything about it?

A. I remember something about the subject matter, yes. In the first place, I was not in favor of purchasing the Shelby Tube Company. I really thought from Mr. Converse's statement that they had patents that were pretty good.

Q. At that time?

A. Yes.

Q. Mr. Converse thought so, too, didn't he?

A. Don't ask me what he thought.

Q. You undertook to say awhile ago what some people thought.

A. I think he claimed that; I will say that.

Q. Claimed it at that time?

A. I will put it this way: From statements he made concerning what the National Tube had done or could do or would do or expected to do, he always being quite enthusiastic, I supposed first that they had something substantial, and I was not in favor of buying the Shelby Tube; but afterwards, in talking with some of the practical men, and I cannot tell you now with whom, but presumably with some of those who attended the directors' meetings in New York and who were more or less in my office, nor can I give you the exact conversation, because my memory is not good enough, I reached the conclusion that we did not have a patent that was satisfactory or sufficient.

Q. Did you examine the patent?

A. No, I did not; and then when it was ascertained that the Shelby Tube were anxious to sell their properties I was in favor of having our people examine the properties, look into them carefully, the patents and everything else, to see really what they were, so as to act intelligently.

Q. When did you first make up your mind that it was a desirable thing to buy the Shelby?

A. I cannot answer that, but I think some time following, when our people had made a report concerning the Shelby patents, their validity and their utility; and I had considerable talk with the president of the company, whose name I have forgotten, concerning their desire to sell and the possi-

bilities of the seamless tube business. I remember the circumstance, but I cannot, of course, fix the date.

Q. Can you fix any time when it first appeared to you on account of the patents that it would be a desirable thing to buy the Shelby Tube Company?

A. You ask for a date; I must answer no.

Q. Can you give any month?

A. No.

Q. At the time of April 20, 1901, at this meeting, had anything been said then about patents?

A. I am very sure there had been, yes; but I did not know anything about the validity of the patents. In fact, I did not know much about the utility, except as this information came. Of course, this does not represent all that was said at these meetings.

Q. I call your attention to page 559:

"It was finally recommended by the committee that the president of this company advise a representative of the National Tube Company, through its president, and one from the Carnegie Company, to examine the plant, look the whole matter over and make a report to the president of this company."

A. Yes.

Q. That says nothing about patents. Did you have then the question of patents up for discussion?

A. I do not think we had. I did not know much about it then, Judge. I must admit I do not think I was in favor of purchasing at that time. I was inclined to dispose of the whole situation without considering actively a purchase.

Q. How long after that before you changed your attitude?

A. That I cannot answer.

MR. LINDABURY: I know you do not mean to be unfair, Judge, but it is called a process instead of a patent, which is the same thing, in that very resolution. I suppose it means it was a patented process.

MR. DICKINSON: That refers to a special experiment made by Mr. Schwab. That was a matter that Mr. Schwab was experimenting on.

By Mr. Dickinson:

Q. At that time, April 20th, you say, then, you do not know that you had made up your mind as to the desirability?

A. I think I was rather opposed to it.

Q. You think you were rather opposed to it?

A. Yes.

Q. Can you say when you did favor it?

A. No, but I think after the report came in and after I had talked with some practical men of the Tube Company and after I had seen Mr. Miller.

Q. What was that report, Judge?

A. It was very favorable to the patent, as I remember; it was sustainable, and that it was of utility.

Q. What patent?

A. The basic patent under which the Shelby Tube operated.

Q. Was that report in writing?

A. No, I do not think so.

Q. It was not in writing?

A. If it was, I do not remember it.

Q. When was that report made?

A. I wish I could give you these dates, but I cannot.

Q. Can you approximate it?

A. No, I cannot.

Q. Who made it?

A. I cannot tell you that now.

Q. Were the patents passed upon by lawyers?

A. I think so.

Q. Can you give the name of the lawyer?

A. No, I cannot, but I believe our patent lawyer examined it. It was Mr. Bennett. I am very sure he did, and I am very sure I talked with him about it.

Q. Following that same meeting, the same page, I call your attention to the following:

"Steel Contract Between Shelby Tube Company and Carnegie Co.

"The president stated that the Carnegie Steel Company had a contract with the Shelby Tube Company to supply it with steel; that it was a very favorable one to the Carnegie

Company inasmuch as the latter could so arrange the price of steel that it would be rather difficult for the Shelby Company to continue in business."

What was the character of that contract?

A. I do not know anything about it whatever.

Q. You have no recollection about that?

A. I have no recollection.

Q. The next clause is:

"The Chairman"—that is you—"expressed the opinion that he would a great deal rather have that company in business under our control than to absorb them."

You absorbed them, did you?

A. If you characterize the purchase of that company as the one who wrote this characterizes it, I would say yes.

Q. How was it under your control?

A. I do not think I ever made any statement just like that.

Q. Do you know what you did say? Do you recall now the particular conversation you had or statements you made then?

A. I do not recall the conversation or statements, no. My memory is not good enough for that. I do remember, however, the incident. I remember that at that time I was not in favor of buying the property, and was trying to dispose of it. I could tell from that language what I probably said, if you want me to. I certainly did not use the words which have been attributed to me, which purported to give the substance of what I said.

Q. Did that have reference——

A. (Continuing) I have no doubt I said I would rather sell them steel than to buy them, but I do not remember saying just that.

Q. Steel under such arrangement as has been referred to by the president?

A. No; I don't think so.

Q. Did your statement have no reference, then, to what he had said?

A. Judge, you must do me the justice to remember that I say I do not remember what I said. I can give you inferences.

I know in those days that if I were opposed to the purchase of those properties I would, in the best way possible, try to dispose of the subject matter without acting on it. I was perhaps foolishly lax in allowing statements to be made, or actions taken, that I would not have approved of later.

Q. Then it was an error of the head and not of the heart, was it?

A. Well, I think so. I do not want to excuse myself at all for any laxity at that time. Still, if you had been where I was, and under the same circumstances, I am quite sure you would have acted about as I did.

Q. Judge, do you have any positive recollection of that meeting and anything that was said and done thereat?

A. I do not.

Q. The conclusion of that minute is as follows:

"The committee instructed the President to take up the matter with Mr. Miller without committing himself."

Was that the matter of the purchase of the Shelby?

A. Yes; I think probably it was. I do not know. I should think so from that. Unfortunately, we do not know whether there was a vote on it, and if there was who voted, or how they voted. As I said, these were not minutes in the ordinary sense.

Q. Judge, I call your attention to the meeting of April 24, 1901, at which you are recorded as being present, Government Exhibits, Volume II, page 560, under the head "Shelby Tube Company."

"The President reported that he had had an interview with Mr. Miller of the Shelby Tube Company and expects to receive from him a statement covering the last six months, showing shipments and amount of orders on the books. A similar statement will be furnished to Mr. Schwab by the National Tube Company. It was suggested that some arrangement could be made with Mr. Miller with the view of maintaining prices, and that some prices now could be advanced by both companies."

What arrangement was there referred to about maintain-

ing prices? What arrangement was that with the Shelby Company about maintaining prices?

A. I have no idea. I have no recollection. It does not state who made the suggestion. I presume you will not find any arrangement was actually made; certainly not with my knowledge or approval.

Q. It mentioned you as being present, Judge, and I thought you might enlighten us as to what the arrangement was.

A. No.

MR. LINDABURY: No. It does not appear, as the Judge says, that there ever was any arrangement. You mean what the arrangement they were talking about was?

By MR. DICKINSON:

Q. We will go, then, to something else. I call your attention to the meeting of April 30.

MR. LINDABURY: Is that the next date?

By MR. DICKINSON:

Q. 1901, Volume II, page 562:

"Present, E. H. Gary, Chairman," and others:

"The President reported in a general way the result of an interview had with Mr. Miller of the Shelby Tube Company. Mr. Schwab believes it is not at present feasible to make any division of the business of the National and Shelby Tube Companies.

"Upon the question of the acquisition of the property of that company, the President stated that the stock outstanding amounted to eight millions of common and five millions preferred stock. He also gave figures showing the business transacted by the Shelby Company. He is impressed with its earning capacity, and believes that under our control it would net about 50%. He rather thinks that the whole property could be purchased for about $3,500,000. Mr. Converse stated that it is the only real live competitor the National Tube Company has and that between the two companies all the patents for seamless tubing manufacture are owned.

"The President suggested that if the purchase was made,

it might be done by giving stock of the United States Steel Corporation in exchange for stock of the Shelby Company and he would propose:

"1 share preferred stock for two shares preferred Shelby stock,

"1 share common stock for five shares common Shelby stock.

"Mr. Converse estimated that the properties of the Shelby Tube Company had cost about four million dollars and thinks very well of such a purchase if it can be made at price named by the President and effected through exchange of stock.

"The Chairman suggested that the President of this company take up the matter again with the Shelby people simply on the basis of an intermediary, with the intimation that the President does not know what can be done, but will see, &c. Mr. Converse stated that if Mr. Schwab can effect such a deal, it is a very good one, and that this committee should then recommend it to the Finance Committee.

"The President stated that he would have another interview with Mr. Miller on the lines of the above and would report later."

Judge, when that suggestion, if made by you as here recorded, was made, did you then understand that the Shelby people were hard up?

A. I cannot answer that. I should think I would, from that statement that the property cost four million dollars and they wanted to sell it for three and a half million.

Q. They had a contract, then, with the Carnegie Company, did they not, which tied them up?

A. I have no recollection; I have no knowledge in regard to it. If I ever had any knowledge I have no recollection of it now.

Q. You do not know what effect that might have had upon their selling?

A. I do not; but if they had a contract at that time it would be in their favor, I should think, because they would have made the contract when prices were very much lower.

Q. Would it be in their favor if it was such a one as stated by the president on page 559, that he could so arrange the price of steel that it would be rather difficult for the Shelby Company to continue in business?

MR. LINDABURY: I object to that as irrelevant, and not cross-examination, and as calling for a speculation.

THE WITNESS: I would say no, if that were true.

By MR. DICKINSON:

Q. If that were true?

A. But I do not see how it could possibly be true. How could he manipulate the price of steel? This was a contract for billets, probably, on some sliding scale arrangement, and he would have to manipulate the whole——

Q. Suppose it was on a sliding scale arrangement.

A. Then he would have to manipulate the whole market in order to take advantage of it.

Q. How would he do that? Could he buy some pig iron and raise the price of billets?

A. If he had the money, I have no doubt he had the disposition to go and buy everything there was in the United States so as to control the market.

Q. Coming back to this meeting of April 30, 1901, when Mr. Converse said, as recorded there, that the only real live competitor the National Tube Company has was the Shelby Company, do you know anything now that you recall as having known then contrary to the fact that the Shelby Tube Company and the National Tube Company were competitors?

A. No, I do not, but I would be interested in knowing whether the Shelby considered the National a competitor.

Q. When Mr. Converse made the statement that between the two companies they owned all the patents for seamless tubing that manufacturers owned, do you know whether at that time the question had been raised to you as to the patents of the National Tube not being such that they could operate under?

A. No, I do not remember.

Q. There is nothing here recorded, is there, about patents other than that they owned them all?

A. No, I do not remember, but from what I learned of the conditions later, I cannot help but view some of those statements as rather ridiculous. I cannot give you the date.

Q. Could you give the month?

A. No; I am sorry I cannot, but I don't remember.

Q. How long was it after you took the Shelby over that you found the conditions in regard to patents?

A. I would presume it was pretty soon after this.

Q. Pretty soon after which?

A. After this meeting was held, but that is presumption. Of course when the report was made, then I ascertained the facts.

Q. I call your attention to a directors' meeting of the National Tube Company, May 21, 1901, Volume II of Exhibits, page 412:

"President Hearne reported that * * *

"Preliminary negotiations for the consolidation of the seamless department with the Shelby Steel Tube Company were under way, but it was extremely doubtful if any tangible results would follow. Two experts on behalf of this company had visited the Greenville and Toledo works, the most modern plants of the Shelby Company, and this visit seemed to show that the facilities of this company are equal, if not superior; also, that it is extremely doubtful if seamless tubes can be produced as cheaply as lap-weld operating under the existing values of their respective raw materials."

Do you know anything about the report of the two experts therein referred to?

A. I have no recollection.

Q. Do you know anything about the facts stated in these minutes, that at that time it seemed that the facilities of the National Tube Company were equal if not superior to those of the Shelby?

A. You do not mean just what you say, I guess.

(The pending question was repeated by the stenographer.)

MR. DICKINSON: I think that is the way it is.

THE WITNESS: I did not think it could be possible that that would be the report. No, I have no recollection.

By Mr. Dickinson:

Q. Do you know anything in regard to the views of the directors of the National Tube Company, entertained at that time, as to whether or not seamless tubes could be produced as cheaply as lap-welded, operating under the values of their respective raw materials?

A. No, but I should think that would be true. Of course it depends upon what you mean by facilities. Referring to the former question, I should think the facilities of the National Tube were very good, or at least might have been made very good, if they had had the Shelby Tube Company's basic patent, because facilities include a great many things.

Q. But you do not know how many patents there were at that time covering the piercing of tubes, do you?

A. No, I do not.

Q. Do you know what the National had?

A. No, I have forgotten. My mind is upon the fact that the Shelby had its basic patent, which is all-important.

Q. Judge, I read from Volume 23, pages 1640 and 1641, of the Stanley hearing, what purports to be the minutes of the finance committee, as follows:

"May 29, 1901. At a meeting of the finance committee of the United States Steel Corporation held this day there were present Messrs. Bacon, Ream, Rogers, Schwab, Gary; Mr. Perkins acting as secretary. The minutes of the previous meeting were read and approved. The president presented the question of purchasing the Shelby Tube Company, stating that the executive committe recommended such a purchase. After considerable discussion, on motion of Mr. Rogers, seconded by Mr. Ream, the president was given power to purchase on the terms he named with power."

Do you recall that power was given?

A. I do not remember.

Q. You do not remember the exact date?

A. No.

Q. Well, power was given, was it not?

A. I have no doubt of it; the properties were purchased.

Mr. Lindabury: To purchase with power, what do you mean?

MR. DICKINSON: Were given the power to purchase on the terms named. That is the way it reads here, but at any rate, I am asking him.

By MR. DICKINSON:

Q. Power was given?

A. Yes.

Q. Do you know the time the power to purchase was given?

A. No, but you gave the date there, and I must assume that is correct.

Q. I will go on now to another subject. We will correct that later, if the copy is not right.

MR. LINDABURY: There is nothing about it to suggest any error as you have read it. I presume it is a correct copy.

By MR. DICKINSON:

Q. I call your attention to Volume II, Government Exhibits, page 413, stockholders' meeting, August 19, 1901; the National Tube Company at that meeting there appears to have presented the second annual report to the stockholders of the National Tube Company for the fiscal year ending June 30, 1901, and in that report, as appears upon page 415, is set out a list of works of the National Tube as follows:

"Seamless; Elwood City, Pa.	Standard Seamless Tube Co.
Christy Park; McKeesport, Pa.	U. S. Seamless Tube Works.
Syracuse; Syracuse, N. Y.	Syracuse Tube Works.
Warren; Warren, Ohio.	Ohio Tube Works.
Youngstown; Youngstown, Ohio.	American Tube Works."

Do you know whether or not, Judge, the collocation of these under the head "Seamless," indicating that all these were seamless tube works, is correct or not, or that they had or did not have the seamless tube works there indicated at that time or not?

A. I don't know. I would think that they were making or attempting to make seamless tubes at these different plants at that time.

Q. That is to say at five different plants?

A. I would think so from that.

Q. And that was as of June 30th, 1901, as you will see from page 413.

A. That seems to be the date.

Q. That is for the fiscal year ending June 30th, 1901?

A. Yes. As I have already said, I think that the total seamless tube tonnage at that time was only about 30,000 tons a year.

MR. SEVERANCE: Did I understand your question to Judge Gary, Judge Dickinson, to be whether or not previous to the acquisition of the Shelby the National was making seamless tubes at five places?

MR. DICKINSON: Whether or not during the year ending June 30th, 1901, they were making seamless tubes at the places which I have indicated, as read from this report.

MR. LINDABURY: That is, at Ellwood City, at Christy Park, at McKeesport, Syracuse, Warren and Youngstown?

MR. DICKINSON: Yes.

THE WITNESS: He is asking what this shows; of course I do not remember. These plants, some or all of them, may have been plants used for the welded tube, but they may have been making or experimenting on seamless tubes here, or they may have secured in the meantime some of the Shelby tubes; I don't remember.

MR. SEVERANCE: Look at the next page, 416. It shows two places. I never heard of them making them in but two places.

By MR. DICKINSON:

Q. You say they may have been using something they got from the Shelby. When did they take over the Shelby?

A. I say I don't remember. I was only answering your question previously from the record.

Q. Had you taken over the Shelby before the 1st of July, 1901?

A. I cannot answer.

Q. You cannot answer?

A. No, sir.

Q. The contract authorizing it, according to that minute, was not until May 29th, 1901; you do not know how long after the authority to purchase culminated in a contract to purchase, and how long after that control was taken, do you?

A. I do not.

MR. LINDABURY: Judge Dickinson, I think it is not quite fair to assume that, in the respect that you are now referring to, this report speaks as of the end of June. You will observe there are stars there. So far as it is a fiscal report it doubtless ended with June 30, 1901, at the bottom of page 413, but in the statement of properties, and so forth, it might well have spoken as of the time of the meeting. I do not know what the fact is.

MR. DICKINSON: I think generally a report speaks as of the time that it purports to end, but if you want to show to the contrary, of course there will be an opportunity of doing it.

MR. LINDABURY: I don't know, but you are assuming, and the witness is, that that might be.

By MR. DICKINSON:

Q. I call you attention to page 416, the same annual report:

"On January 2nd, 1901, the entire capital stock of the Standard Seamless Tube Co., of Ellwood City, Pa., was acquired by purchase and later amalgamated with the United States Seamless Tube Works of Christy Park, and these two plants have since been operated as the Seamless Department of the Company. Both of these plants are thoroughly well equipped and the best of their respective classes in existence."

Do you know anything about the facts there stated?

A. I do not.

Q. One way or the other?

A. No.

(Thereupon a recess was taken until 2 o'clock p. m.)

AFTER RECESS.

ELBERT H. GARY,

the witness under examination at the taking of recess, resumed the stand for further

CROSS EXAMINATION (Continued),

By Mr. Dickinson:

Q. Do you know whether the National Tube Company was advertising as early as December 20, 1899, the sale of seamless tubes?

A. I do not. I should not be surprised at it, however.

Mr. Dickinson: I will offer in evidence, and you can have it verified from the original, Mr. Lindabury, this article from the Iron Age, December 20, 1899, page 20:

"National Tube Company, manufacturers of black and galvanized wrought merchant pipe all kinds, sizes 1-8 to 30 inches. Boiler tubes. Mild steel and charcoal iron for stationary, locomotive and marine works. Casing, tubing and drive pipe for well purposes. Gas and oil line pipe. Cylinders lapwelded and seamless, tested 100 lbs. to 3,700 lbs. for compressed air, carbonic acid gas, anhydrous ammonia, etc., etc., etc. Water and gas mains. Converse and Matheson, lead joint, pipe for mains. Seamless tubes, shrapnel, projectiles and miscellaneous forgings."

Do you know anything about such advertisements being in existence at the time the United States Steel Corporation first began negotiations for the Shelby?

The Witness: I have no recollection of it now. I would not be surprised, however, to see such an advertisement.

Mr. Dickinson: I offer in evidence from an article in the Iron Age, May 16, 1901, page 34, an excerpt as follows:

"A contract has also been received by the National Tube Company, and will be executed at their seamless tube plant at Christy Park, near McKeesport, for 13,000 seamless tubes, to be used in Niclausse boilers, being built by the Sterling Company at Barberton, Ohio, for a new line of steamships

for the Pacific Coast trade. These are being built by the Eastern Shipbuilding Company, of New London, Conn., for one of the J. J. Hill companies. These ships are said to be the largest freighters ever built, having a displacement of about 25,000 to 30,000 tons."

Do you know anything about that fact?

MR. LINDABURY: One moment. You offer that in evidence, Judge?

MR. DICKINSON: Yes.

MR. LINDABURY: I want to put in an objection. I object to it as hearsay and irrelevant.

By MR. DICKINSON:

Q. Judge, do you know anything about that transaction?

A. No.

Q. At that time that would have been quite a large amount of seamless tubes, would it not?

A. What was the quantity?

Q. 13,000.

A. Yes, it would.

Q. Does it state there that they manufactured them?

A. It does not say at what point.

MR. LINDABURY: No, it does not say they manufactured them at all, Judge.

MR. DICKINSON: It says: "A contract has also been received by the National Tube Company, and will be executed at their seamless tube plant at Christy Park." Yes, it does say.

MR. LINDABURY: I suppose that would mean manufactured.

THE WITNESS: Christy Park was at McKeesport, where the National Tube had a large plant for other classes of tubes.

I should like to add to that other answer what I think is appropriate: The ability to manufacture seamless tubes would involve the physical ability, so to speak, and also the ability to manufacture them at a cost that would make it a commercial proposition. Of course I would like to include both of those reasons in statements I have heretofore given.

I know very well that there were a number of manufacturers that had started to manufacture seamless tubes to some extent. It seems to me, with the acquisition of the Shelby Tube, the National Tube only had about 83 per cent. of the total, whereas that has gone down, as you know, to 50 per cent. at the present time.

MR. LINDABURY: Much less than that, I think.

THE WITNESS: Less than fifty per cent.

MR. COLTON: We do not know what it is; I do not know whether you do or not.

MR. LINDABURY: I do; I thought you did or I would not have spoken.

By MR. DICKINSON:

Q. Did you know at the time of that advertisement anything at all about the cost to the National Tube Company of manufacturing seamless tubes?

A. No.

Q. You had been connected with the wire rod and steel business in the United States since the time of the organization of the Consolidated Steel & Wire Company in the early nineties, to the time that the American Steel & Wire Company of Illinois went into the American Steel & Wire Company of New Jersey?

A. Yes, in the way I have already stated.

Q. You had a good deal to do with the organization of the Consolidated Steel & Wire Company?

A. Yes.

Q. And also with the American Steel & Wire Company of Illinois?

A. Yes, as a lawyer.

Q. And you were interested, were you not, as a stockholder?

A. No.

Q. In neither one of them?

A. Yes; I was with the latter.

Q. You were not interested in the Consolidated Steel & Wire Company?

A. Not at the beginning, no.

Q. When did you become interested in it?

A. I could not give you the date, but some years after it was organized.

Q. Were you not one of the underwriters of the American Steel & Wire Company of New Jersey, or the syndicate?

A. I think I took some interest in the syndicate, yes.

Q. And you had stock, had you not, in the American Steel & Wire Company of Illinois?

A. When?

Q. At the time the American Steel & Wire Company of New Jersey took it over.

A. I cannot answer that; I do not remember. The interest I took in the syndicate I took as others did to whom subscriptions were offered, entirely as an outsider, and not as one connected with the steel and wire industry, because I was not connected with it at that time.

Q. Were you not at that time connected with the American Steel & Wire Company of Illinois?

A. I do not think I was. I do not think I had any interest, not even as a stockholder; I certainly had no other connection, and I do not think I was a stockholder at that time.

Q. I understood you to say that your connection with the Consolidated Steel & Wire Company was as a lawyer only?

A. Yes, up to a period several years after it was organized, as I remember. If you have the date there when I became a director of the Consolidated Steel & Wire Company I think that will give the time I became interested as a stockholder.

Q. I am going to show you here, and then I will question you on it, so that you will have an opportunity to refresh your memory, the paper put in evidence here by the Government, which is the testimony of Elbert H. Gary, called as a witness in behalf of the defendant in the Parks-Gates suit, I think. It is in Volume IX of Government Exhibits. Turn to pages 2325 and 2326. I will ask you whether you were connected with the organization of the Consolidated Steel & Wire Company not merely as a lawyer, but in other ways, and I ask you to say whether that refreshes your memory.

A. That does not refresh my memory at all. I am perfectly familiar with the facts, I think.

Q. What does that state?

A. It says "I have been connected with the wire rod or steel business in the United States since the organization of the Consolidated Steel & Wire Company, in about 1892, I had charge of the legal work, and a good deal of other work at the time that was organized."

Q. What other work, at the time it was organized?

A. Work trying to ascertain values, making estimates, going over the accounts and figures, and so forth, making distributions, and work of that kind. You see, I stated that I had not become interested as a stockholder until some time after that.

Q. I see. That was your statement before you saw the book, too.

A. Mr. Patterson, I remember, was the active business man and he consulted me from time to time, and I assisted him more or less at the time of the organization.

Q. You had known John W. Gates a long time prior thereto, had you?

A. Yes.

Q. Was he active in the formation of the Consolidated Steel & Wire Company?

A. Yes.

Q. Were Alfred Clifford and William Edenborn, who afterwards became a director of the United States Steel Corporation, associated with you in the management of the Consolidated Steel & Wire Company?

A. You do not want to connect me with them. I was not interested in the management of it. They were connected with it.

Q. You were counsel for it?

A. Yes.

Q. You were not a director?

A. Not until some years after it was organized.

Q. When did you become a director?

A. I cannot fix the date; I don't remember.

Q. Did they continue directors down to the time this was

taken over by the American Steel & Wire Company of Illinois?

A. I think so.

Q. Then did you serve as a director contemporaneously with them?

A. Yes.

Q. And they afterwards became directors of the United States Steel Corporation?

A. Yes.

Q. Prior to the summer of 1897, had not you and Mr. Gates both been doing something looking towards the consolidation of wire and steel factories?

A. Yes.

Q. Was not the organization and putting into operation of the Consolidated Steel & Wire Company in itself a long step in the direction of the consolidation of steel and wire factories?

A. I should think it was.

Q. During the period from 1892 to 1897 had not you, Mr. Gates and Colonel Lambert and Colonel Ellwood, all of whom were connected with the Consolidated Steel & Wire Company, had under discussion on one or more occasions the amalgamation of different wire and steel companies?

Mr. Lindabury: Objected to as not cross examination.

The Witness: More or less during that period. I cannot say when that commenced. From present recollection I would not say it commenced as early as 1892.

By Mr. Dickinson:

Q. Suppose you look at page 2327, and the testimony given there, and see whether that refreshes your memory.

Mr. Lindabury: The fourth line from the top, I suppose you are referring to.

The Witness: That is not susceptible of the construction you put upon it in your question to me.

Q. In what way do you think it is not susceptible of that?

A. You assume in your question that the conversations took place from time to time, commencing in 1892 and ending in 1897, but I say that it was subsequent to 1892.

Q. What time would you put it?

A. I would say from recollection now the first conversations were probably during the last year preceding the fall of 1897.

Q. Were you and John W. Gates associated together with the Illinois Steel Company?

A. Yes, in the way I have described.

Q. You were both directors of that company?

A. We were certainly in 1897, as early as some time in 1897.

Q. You were both stockholders?

A. No, I was not a stockholder, except perhaps a nominal stockholder, in order to qualify as a director. I had no pecuniary interest in it.

Q. In the Illinois Steel Company?

A. No.

Q. At no time?

A. No; I say I had no pecuniary interest. By that I mean except a very few shares for qualifying purposes.

Q. At no time did you become interested to any considerable extent?

A. No.

Q. Please look at pages 2328 and 2329, and I will ask you if in the latter part of August, 1897, you and Mr. Gates actively took up the question of buying up wire and steel properties with a view of putting together the principal steel and wire manufactories in this country?

Mr. Lindabury: One moment. Would you mind explaining the object of this examination, Judge? Of course, it is not proper for any witness to be asked to refresh his recollection by some testimony he gave on a preceding occasion, unless, of course, he has already on direct examination made statements to the contrary. This witness has not been examined on this subject at all, and I cannot quite understand in virtue of what rule of law you are conducting such an examination as this.

Mr. Dickinson: I will explain to you why I handed to him the book. I was going to ask him these questions, anyway, and on account of the direct testimony that he gave in regard

to his acquaintance with the wire business, but I thought really it was fairer to Judge Gary in asking him the questions to let him see the testimony. Of course I could have asked the questions independently; but if you prefer me doing it and not showing him the book, I won't do it.

MR. LINDABURY: I was asking your theory. Frankly, I could not see in the first place that it was cross examination upon anything that he had said.

MR. DICKINSON: Yes, it is, because he said he knew very little about the wire business. I am trying now to show an acquaintance with it.

MR. LINDABURY: I do not remember that statement.

MR. COLTON: He testified in regard to the wire business, anyway.

MR. LINDABURY: Of course he did, but I do not remember that he said he knew very little about it.

THE WITNESS: Where on the page referred to is there any justification for what you assume in the question you have asked me?

MR. LINDABURY: I wish, in view of the statement Judge Dickinson has made as to the object of the examination, to make an objection to it. I do not understand that he expects to show by the testimony of Judge Gary in the Parks-Gates suit any contradiction to anything that he has testified to on direct examination in this case; but anyhow, if he does, that testimony is in evidence by stipulation in this case, and speaks for itself, and whatever it shows in the way of knowledge on the part of Judge Gary of the business or connection with it is already in evidence in the record, and there seems to be no occasion for putting it in a second time by asking him to re-swear to what he swore to there.

MR. DICKINSON: My recollection is, and is confirmed by Mr. Colton, that you excepted to that as being incompetent.

MR. LINDABURY: No, as irrelevant.

MR. DICKINSON: I thought it was incompetent, too; not on the ground that it was an incorrect copy, but on the ground it was incompetent to use it as evidence. I won't refer to that, if you do not want to.

MR. LINDABURY: No, I do not object to your doing that.

MR. DICKINSON: I will just ask Judge Gary those questions independently. I thought possibly I was doing a kindness to him.

MR. LINDABURY: Don't misunderstand me. I am not criticising your showing it to him, but rather objecting because it seemed at least to be consuming unnecessary time to go all over this testimony again simply for the purpose of repeating it. I think it is true, now that you speak of it, that I objected on the ground that the testimony was not binding upon any other defendant except the Judge.

MR. DICKINSON: I don't know that you admitted that it was as to him.

MR. LINDABURY: I think I made a special exception on behalf of other defendants.

MR. COLTON: You did, but my recollection is that you excepted to it as incompetent, not as not a correct copy of what he had said, but as not proper evidence in the case anyway in behalf of Judge Gary as well; I do not remember as to that.

MR. LINDABURY: I did not mean to object to your showing it to him.

By MR. DICKINSON:

Q. Will you answer the question?

(The question was repeated by the stenographer, as follows:)

"Q. Please look at pages 2328 and 2329, and I will ask you if in the latter part of August, 1897, you and Mr. Gates actively took up the question of buying up wire and steel properties, with a view of putting together the principal steel and wire manufactories in this country?"

A. I think I can answer that in the affirmative, as stated in the testimony, and if it will help you any, Judge, I will say that all the testimony—I mean if it will save time for you, all the testimony I gave in that case I believed to be absolutely true at that time, and I have had no reason to change my mind since in regard to that opinion.

MR. DICKINSON: I think to make this competent as to other parties, Judge, I shall have to go on.

MR. LINDABURY: Will you let me see what the record is, Judge?

MR. DICKINSON: Yes.

MR. LINDABURY: Did I not stipulate that that should be received with the same effect as if the Judge had sworn to it in this case?

MR. DICKINSON: No.

MR. LINDABURY: I would be willing to do that if it would save any time.

MR. COLTON: There are a few things in it—I do not mean that there is anything special—but there are a few things that we want to prove as facts.

MR. LINDABURY: If you please, but I would be willing now to stipulate, Judge Dickinson, that this testimony shall stand with the same effect as if sworn to by the Judge in this case; and that as to all defendants whom we represent.

MR. DICKINSON: I have formulated my plan of examination, and I think it really takes more time than if I should proceed without interruption. I have not read the whole of that recently, and——

MR. LINDABURY: Pardon me, then, Judge.

MR. DICKINSON: I think I would have been through this or pretty nearly through if I had gone ahead.

MR. LINDABURY: Very well; I thought you had a day's work there.

MR. DICKINSON: No; I am not going to take it all.

By MR. DICKINSON:

Q. How did you answer the last question, Judge?

A. I answered it in the affirmative.

Q. Were you and Mr. Gates attempting to get the leading manufacturers in control of the different steel and wire companies together in consultation in New York at a time when some other gentlemen were also considering the subject of consolidating all the wire business interests?

A. I think the latter part of that statement is more than I could testify to from recollection. I do not remember, now, that those other gentlemen were attempting to get them all together; but they were engaged in the same effort to get a good many of them together.

Q. Did you and Mr. Gates join forces with these other gentlemen?

A. We did.

Q. Was Mr. I. Gifford Ladd one of those?

A. Yes.

Q. Was he afterwards concerned in the organization of the American Bridge Company?

A. He may have been. I cannot deny that he was.

Q. Did you and Mr. Gates take the matter up with the banking house of J. P. Morgan & Company?

A. Yes.

Q. Did you take it up with Mr. Coster, of that firm?

A. Yes.

Q. Did Mr. Coster have special control and management of corporations, including railroad and industrial organizations?

A. I think he did.

Q. Did you and Mr. Gates and others have any discussion as to about how you were to divide the contemplated profits, consisting of $15,000,000 of common stock?

A. I think we did. With Mr. Coster, you mean?

Q. You and Mr. Gates, with each other and Mr. Parks?

A. We certainly did with Mr. Gates, and we did with Mr. Ten Broeck, representing Mr. Parks, and Mr. Ladd and Mr. Wolf I think was the other man; and no doubt Mr. Gates and I had some understanding.

MR. LINDABURY: May it be understood, without my repeating, that all this testimony is taken subject to objection on the ground of irrelevancy and incompetency and that it is not cross-examination.

MR. DICKINSON: Yes.

By MR. DICKINSON:

Q. Now, Judge, as the result of the interview between you and Mr. Gates, Mr. Parks, Mr. Ten Broeck and Mr. Coster, did you enter into an agreement dated September 23, 1897, with J. P. Morgan & Company, looking to the organization of a company which would purchase or control the properties of the Consolidated Steel & Wire Company, the Washburn & Moen Manufacturing Company, the Cleveland Rolling Mill

Company, the Newcastle Wire Nail Company, the Oliver Wire Company, the American Wire Company, the Pittsburgh Wire Company, the H. P. Nail Company, the American Wire Nail Company, the Salem Wire Nail Company, the Superior Barb Wire Company, the Ellwood Wire & Nail Company, the Continental Wire Company, the Kilmer Manufacturing Company?

A. I do not remember the names of those companies now. There was an agreement made between the firm of J. P. Morgan & Company and myself and, I think, Mr. Ten Broeck, representing those other people. I do not remember whether Mr. Gates was a party to that, Judge; nominally, I mean.

Q. At any rate, the agreement contemplated taking in a large number of companies?

A. Yes.

Q. You do not remember them all by name?

A. I do not remember the names.

Q. Do you remember most of those called to your attention?

A. I remember some of them.

Q. Judge, were not most of the companies which were embraced in that agreement afterwards taken into the American Steel & Wire Company of New Jersey?

A. I should think so, yes. I do not remember that, you understand, Judge; but I believe so.

Q. Did you have any knowledge of the existence of a wire nail pool during the year 1895 and 1896 or during any part of those years?

A. I knew of one wire pool, after it had been formed some time, and was the means of its abandonment; that is, I think it was abandoned on my advice; and there was a suit commenced in regard to it which was afterwards settled—a suit to recover damages.

Q. This wire pool that you speak of, was not the Consolidated Steel & Wire Company a party to it?

A. I think it was.

Q. Was not John H. Parks the commissioner and treasurer of that wire nail pool?

A. I think so. I do not know whether this is in evidence

or not, but if so, I believe you will find—anyhow it is my recollection—that after this suit at law had been commenced, the Consolidated informed me of this pool having been formed, and I advised them to abandon it, and it was abandoned by all of those who had participated in it. I cannot give you the exact time of it. You fix a date; but it was certainly prior to 1897.

Q. And it was ended prior to 1897, was it not?

A. Yes.

Q. Did not the prices of nails fall $20 a ton upon the abandonment of that pool?

Mr. Lindabury: That is objected to as irrelevant.

The Witness: I have no recollection whatever. I did not know anything about the market prices in those days.

By Mr. Dickinson:

Q. You do not know whether they fell or not?

A. No, sir; I had nothing whatever to do with the business of the Consolidated Steel & Wire.

Q. Did you not know that the Consolidated Steel & Wire Company was connected with the barb wire pool?

A. No; I do not think there was a barb wire pool. All I ever knew about barb wire was that the wire people generally had a license to manufacture barb wire under patents controlled by some company. I never heard of the legality of that being questioned before.

Q. Was there not an association, Judge, of a number of companies owning patents?

A. There may have been; they were acting under advice of another counsel. Their general counsel was John R. Bennett, if I have the initials right.

Q. What effect did these pools that you know of, while they operated, have upon prices?

A. I have no knowledge whatever in regard to that; never did have.

Q. Didn't C. H. Coster send a letter, February 26, 1898, addressed to you and John W. Gates, saying:

"Having been brought into close contact with the business of these companies (referring to the wire companies) and

with many of the leading manufacturers, it may not be out of place to suggest, first, the difference between the profit showing of 1897 and previous years, is demonstration that some arrangement whereby prices can be maintained is absolutely necessary to success; and secondly, that if the manufacturers will make some arrangement whereby the plan named in these contacts which have been given can be extended for a few months and prices in the meantime maintained, so that for the year 1898, or if possible a substantial part of the year, the net earnings will amount to as much as they did in previous years, the proposed arrangement can probably still be carried out on about the plan we have been considering. As you know, I have given these matters a great deal of time, and it is with the deepest regret that I am obliged at the present time to decline to proceed further.

Yours truly,

C. H. Coster."

The question is whether Mr. Coster sent you and Mr. Gates that letter.

A. I have no recollection of it. If I testified to that in the Parks case I am willing to admit he did.

Q. You were dealing with Mr. Coster as a representative of Mr. Morgan, were you not, with a view of putting these companies together?

A. Yes.

Q. He turned the proposition down, did he not?

A. He did.

Q. Did he not upon the question largely of earnings which were then being shown, as contrasted with previous earnings?

A. It was partly that, but there were other reasons. I think the Spanish War had a good deal to do with it; that was commenced or was seriously threatened about that time.

Q. There is the entire letter, if you would like to look at it. (Handing letter to witness.)

A. Is not that in the Parks case?

Q. No, that is the Coster letter.

A. I am not in a position to admit or deny this, because I do not remember it.

Q. You referred to that in Volume IX of Exhibits, page 2339. Look at that, will you, please, the bottom paragraph. Do you recall that now?

A. Do I recall this letter?

Q. Yes.

A. No; I do not.

Q. Have you read it all?

A. Yes; I have read this.

Q. The whole of the letter?

A. Yes, I think I have read the letter.

MR. LINDABURY: From what source was that letter produced?

MR. COLTON: You gave it to me.

MR. LINDABURY: I thought I did. Well, now, the only proper question of the witness about such a letter is whether he received it. Its contents speak for themselves. Now, you have the fact that the letter was received and admitted, and it was put in. Now, how is it possible to ask the witness whether a letter was written to him, reading so and so, and then read the letter?

MR. DICKINSON: On page 2339 is this statement of yours, Judge Gary:

"Of course, I am not certain, Mr. Fox, that this letter of February 26th was received that same day, although I think it was; I think it was sent by messenger. It was about that date or very soon after."

Now I will ask you if you received that letter?

THE WITNESS: Well, I should think yes. Will this cover the inquiry? We had received a written notification from Mr. Coster that he declined to proceed, and he did suggest a further extension, and some of the manufacturers would not make the extension and the thing fell through. That is as far as I now remember.

By MR. DICKINSON:

Q. After the failure of that, did not you and Mr. Gates and Colonel Ellwood and Frank Baackes take up the question of consolidating into one company the various companies which afterwards came into the American Steel & Wire Company of Illinois?

MR. LINDABURY: Objected to as not cross-examination, and as irrelevant.

THE WITNESS: Yes.

By MR. DICKINSON:

Q. Did Mr. Gates and Mr. Frank Baackes, Colonel Ellwood, Mr. Clifford, Mr. Edenborn and you become directors of the American Steel & Wire Company of Illinois upon its formation?

A. Yes.

Q. Is it not a fact that the putting together of the interests which were consolidated in the Consolidated Steel & Wire Company and their subsequent consolidation together with other steel and wire interests in the American Steel & Wire Company of Illinois, was such a consolidation as would be and was very useful and beneficial in the plan to put together all of the leading manufacturers in the steel and wire business?

A. I do not know; I cannot answer that question.

Q. Look at page 2348, towards the top, and state whether that as recorded there is the fact at the time you gave your evidence in the Parks-Gates suit.

A. That is my answer, Judge. It speaks for itself; I would not care to modify that, as being my opinion at that time.

Q. You gave that as a statement of fact?

A. As an opinion.

Q. You were nearer the events then than now?

A. Yes.

Q. At the organization of the American Steel & Wire Company of New Jersey did you not sign a notice to the stockholders of the American Steel & Wire Company of Illinois which contained a statement as follows:

"The syndicate agreements will provide that the New Jersey Company shall acquire such of the capital stock of the American Steel & Wire Company of Illinois, not less than a majority thereof, however, as may be offered on the following basis;" and then setting out the basis?

MR. LINDABURY: I object. Any witness inquired of as to

the contents of a paper he signed is entitled to have the paper laid before him before he answers it. Where is that?

MR. COLTON: At the top of page 2265, Volume VIII, Government Exhibits.

MR. LINDABURY: What is the date of that Coster letter?

MR. DICKINSON: February 26, 1898. You will find it in Volume I of the record, page 340.

MR. LINDABURY: Before you answer, I object, because the statement which is in evidence speaks for itself as to its contents, which is in evidence as Government Exhibit No. 360.

THE WITNESS: I should like to see the original paper.

MR. DICKINSON: I think counsel agree that is a copy of the original, don't you?

MR. LINDABURY: No, I do not recall just now.

MR. DICKINSON: I thought it was put in subject to an exception for relevancy.

MR. LINDABURY: Just for the moment, I do not recall about it. I do not say I have not agreed to that.

THE WITNESS: I doubt if I signed the original paper, Judge. I had left the Wire Company, actually, some time before that. I had nothing whatever to do with it. I had sold out my interest, my stock, and while it is possible I might have been left on the board of directors of the American Steel & Wire Company of Illinois, and it is possible I might have authorized my name to be attached to the circular, I have no recollection in regard to it, and I certainly do not think now that I personally signed it, because I did not have any interest in the subject matter whatever.

MR. LINDABURY: Before you proceed, you have forgotten, as I had, the origin of this paper. We never assented to it; we never agreed. It was produced by Frederick Strauss under your subpoena and he did not know its source or anything of the kind, but he found a print among his files, the origin or authenticity of which he knew nothing about, and he produced that, and this is a copy of it, and it was put in under objection.

By MR. DICKINSON:

Q. Whether you signed that or not, state whether or not that correctly sets forth the substance and the terms upon which that transaction took place?

A. I do not know anything about that, and I never did know anything about the facts. I had no information in regard to it. I was entirely disconnected and disassociated with those people and those interests at that time.

Q. Judge Gary, I call your attention to Volume II, Government Exhibits, pages 823 and 824, to the following:

"State of Illinois, County of Cook, City of Chicago. The undersigned as owners and holders of 119,208 shares of the preferred stock, and 119,933 shares of the common stock, being more than 99 per cent. of the capital stock of the American Steel & Wire Company, a corporation organized under the laws of the State of Illinois, do hereby ratify, approve and confirm the foregoing agreement between said company and Frederick P. Voorhees, dated March 11, 1899, which was executed by said company at the request of the undersigned, and hereby acknowledge full payment and satisfaction of the distributive share as stockholders in the corporate assets or property of said company and release and discharge said Voorhees and the directors, managers, officers and agents of said corporation of and from any and all further accountability or liability in respect thereof.

"The undersigned further agree and consent that the corporate enterprise of said American Steel and Wire Company be abandoned, that the charter, franchise and corporate name be surrendered, and that the corporation be dissolved."

Signed by twelve persons, among them E. H. Gary. Do you recall that?

A. I do not.

Q. Does that refresh your recollection?

A. It does not at all. I should like to see the original paper. I can account for my name being attached to that paper, of course. It would seem evident to me that my name must have been continued as a director of the American Steel & Wire Company of Illinois, and these names undoubtedly represent the directorate of that company, but I certainly had nothing whatever to do with that.

Q. This paper comes from the minutes of the American Steel & Wire Company of Illinois. Were you counsel for that company at that time?

A. No.

Q. You were a director?

A. It seems that my name had been continued. From this I would think so, although I would have thought otherwise because I disassociated myself from those people and those interests about the 1st of October, I should think, 1898.

Q. You notice that this is attested under seal by F. E. Patterson, assistant secretary.

A. Yes. Well, these were legal proceedings. This paper was evidently drawn by a lawyer and for the purpose stated in the paper, and undoubtedly the assistant secretary signed the paper prepared by counsel.

Q. Do you say he signed your name?

MR. LINDABURY: You ought not to try to mislead the witness.

MR. DICKINSON: I am not. I don't think I am.

MR. LINDABURY: You don't mean to say that the paper was attested by F. E. Patterson, the signature of Judge Gary. The seal of the American Steel & Wire Company is all that the secretary attested.

MR. DICKINSON: He may have been a witness to this too.

THE WITNESS: I do not think I signed the paper. If I did sign it——

By MR. DICKINSON:

Q. You have forgotten all about it, have you?

A. I have forgotten about it, and if I signed it, I signed it because counsel presented the paper to me and stated the object of it and I put my name down in order to allow them to dissolve the old company. I had nothing whatever to do with it, and had no knowledge whatever in regard to it, and I do not think——

Q. Did you become a stockholder of the American Steel & Wire Company of New Jersey?

A. No.

Q. Not at all?

A. I did not, except by that underwriting——

Q. But you did by virtue of that?

A. I took an interest in that, and I sold out the interest

as soon as I could. I never had anything to do with the company prior to its acquisition by the U. S. Steel.

Q. Do you know whether you got stock or cash in that transfer?

A. I do not think I made any transfer.

Q. Of stock?

A. No, I did not make any.

Q. You said if you had any stock, as far as you recollect, it was only qualifying stock as a director?

A. That was the Illinois Steel; that was an entirely different company; as far as the American Steel & Wire Company of Illinois——

Q. (Interposing) The American Steel & Wire Company of Illinois, its stock was exchanged for the American Steel & Wire Company of New Jersey?

A. I did not have any.

Q. I understood you to say if you had any your recollection was it was mere qualifying stock.

A. That relates to the Illinois Steel Company.

Q. So you mean to say at that time you had no stock of any sort in the American Steel & Wire Company of Illinois?

A. No, I think not; not a share. I am very sure I did not. Let me give you the facts in regard to both companies. I can do it in a very few words.

Q. What I am trying to get at is whether you were a director at the time the transaction was made, whether you had any stock of any kind, qualifying or otherwise?

A. I will give you the facts to my best recollection.

Q. That is all I want.

A. As to the American Steel & Wire Company, I was a substantial stockholder.

Q. You mean of Illinois, now?

A. Yes, of Illinois. As to the American Steel & Wire Company of Illinois, I was at one time a substantial stockholder. My recollection is that soon after I came to New York I sold out all the stock I had in that company, and therefore had none at the time the American Steel & Wire Company of New Jersey was organized. Possible to be mistaken,

and I might have had some left, but I do not think I did. As to the Illinois Steel Company, I did——

Q. (Interposing) Well, now, I am not talking about the Illinois.

MR. LINDABURY: You did not mention the date of coming to New York, Judge.

THE WITNESS: I came to New York to take the presidency of the Federal Steel Company October 15th, 1898.

MR. DICKINSON: Now, Judge, I do not want to argue with you, but if you had no stock at the time why would it be necessary for your name to appear there?

THE WITNESS: Because I think my name had been continued as a director of the company.

By MR. DICKINSON:

Q. Could that be without being a stockholder?

A. Yes; I think it could in Illinois. If not, the company held one share, or something like that, for me. I do not think I was a stockholder at the time of the organization of the American Steel & Wire Company of New Jersey.

Q. Judge, did you visit the Lorain Company's Steel plants and works at the time the Federal Steel Company was formed?

A. I did.

Q. What did the Lorain Company have at that time, in the way of furnaces and rolling mills, completed or under way?

A. They had two blast furnaces, they had a blooming mill, a girder rail mill and some other things; I do not remember exactly what.

Q. Do you know, Judge, at what time they completed the plants that were in process of being constructed at the time of the formation of the Federal Steel Company?

A. I do not, exactly; but as soon as we could.

Q. You do not know what year?

A. No; I do not. I suppose we did the most of it in 1899.

Q. Was any enlargement made of the rail mill of the Lorain Steel Company between the time it was taken over by the Federal Steel Company and February 24, 1903?

A. I cannot answer that from recollection.

Q. Can you give the comparative capacity of the Lorain Steel Company in blast furnaces, blooming mills and rolled products, as it existed in 1898, as compared with what it was upon the completion of the building which was going on at the time of the formation of the Federal Steel Company and completed during 1899?

A. I cannot. I should say it was considerable. Of course I had no reason to carry those items in my mind, Judge, and my memory is not good enough to retain them.

Q. Judge, do you know that in 1903 the Lorain was making Tee rails, and had been for two years prior thereto?

A. Some Tee rails. I would not think, now, from recollection, it made any considerable quantity in 1903.

Q. Still you do know that they were making Tee rails in 1903?

A. No; I don't know that, even.

Q. Do you know whether or not they were making them in 1902?

A. No; I do not.

Q. Or 1901?

A. I don't know that, either. If I were to guess at it, I should doubt their having made any later than 1900.

Q. I am not asking for a guess. I am just asking what you know.

A. I do not remember.

Q. Do you know the size and capacity of their rail mill?

A. No, sir; I do not remember.

Q. Were J. P. Morgan & Company large bondholders and stockholders of the Illinois Steel Corporation?

A. I do not know.

Q. Prior to the time it was taken over by the Corporation?

A. I don't remember.

Q. I will call your attention again to your testimony appearing in Volume IX, which you have there, on page 2330, and to the statement: "Finally Mr. Gates called attention to the fact that J. P. Morgan was a large bondholder and stockholder of the Illinois Steel Company, that we were acquainted, he and I were acquainted at Morgan's, and he be-

lieved it was possible to get the firm of J. P. Morgan & Company enlisted in the enterprise."

Does that refresh your memory at all as to whether or not J. P. Morgan or Morgan & Company were large bondholders or stockholders in the Illinois Steel Company at that time?

A. It does not. Of course there is better evidence than mine in regard to that.

Q. You were asked who financed the Federal Steel, in the sense of bankers, and you answered: "J. P. Morgan & Company formed a syndicate or managed a syndicate which provided $14,000,000 or a little more," and then the question was asked: "Did they act in the formation of the Federal Steel Company otherwise than in the capacity of financiers?" You answered: "They did not."

A. That is the firm. Mr. Bacon and I did the work.

Q. But were they not interested, either the firm or members of the firm, as stockholders or bondholders, and were they not members of the syndicate, and were they not represented on the board of the Federal Steel Company?

A. They were represented on the board.

Q. Were they stockholders and bondholders?

A. Well, I have already stated that I do not remember.

Q. Were they members of the syndicate?

A. They were managers of the syndicate.

Q. And members, too?

A. I do not know. If I ever did know, I do not remember.

Q. On page 8744, Volume 65 of your testimony, you said:

"In fact, the Federal Steel was only the beginning of a plan or organization to carry into practical and successful effect what we had in mind and what we were endeavoring to accomplish."

Now, what did you have in mind at that time to which you referred, and what were you endeavoring to accomplish?

A. We were endeavoring to establish a plant for the manufacture of the principal lines of iron and steel at the lowest cost, and for the purpose of offering them for sale in this country and foreign countries throughout the world, and

all the raw products that entered into the manufacture of iron and steel, and facilities for transporting the raw materials to the finishing mills.

Q. Was that plan conceived, then, substantially the one that you participated in, in carrying out the formation of the United States Steel Corporation?

A. No, certainly not.

Q. You said "The Federal Steel was only the beginning of a plan or organization to carry into practical and successful effect what we had in mind and what we were endeavoring to accomplish."

Now, what did you have in mind beyond what the Federal was, and was the plan there carried out that you then had in mind?

A. I think you mix a plan for securing certain things and the method of securing them. At the time we formed the Federal Steel we believed we were forming and carrying into effect a plan which would be effective. It proved to be ineffective, inefficient, as I have attempted to describe. At that time we had no idea of taking in any other companies, purchasing any other going concerns. It was after we had formed the Federal Steel and found by practical experience that it was inefficient, too small, and really only the beginning of securing facilities which we had hoped to secure when we formed the Federal Steel, by the acquisition of these properties and perhaps, if necessary, building additional mills; after we had been going for some time, and after we had failed to secure funds to build additional finishing mills, so as to give a diversity of products, then it was we availed ourselves of the opportunity to buy these other plants which went into the United States Steel Corporation.

Q. Did you have in mind when you formed the Federal Steel any other plan that was broader and beyond that you were then contemplating in the Federal Steel?

A. No.

Q. Then what did you mean when you said "In fact, the Federal Steel was only the beginning of a plan or organization to carry into practical and successful effect what we had in mind and what we were endeavoring to accomplish?"

A. So it proved to be; it proved to be the fact. When we formed the Federal Steel I think there is no doubt we had in mind the idea of building additional mills so as to diversify our product, and we would have done so if we could have secured the money.

Q. What kind of ore did the Carnegie Company have that the Minnesota Iron Company did not have?

A. It had a good deal more of the Old Range ore, so-called, which at that time was more essential for the purpose of mixture than they are at the present time.

Q. Were not both of them large holders on the Vermillion Range?

A. We thought at the time the Federal Steel was formed the Minnesota Iron Company was a large holder of Vermillion Range ores; it was not so very large from the present standpoint. We had two mines on the Vermillion Range.

Q. Was the Vermillion Range ore as high a grade ore as the Old Range ore?

A. It is a high grade Old Range ore.

Q. Did the Federal Steel and the Minnesota Iron Company both have an insufficient supply of Old Range ore such as that in the Vermillion Range?

A. I do not think you mean to ask that question, Judge; the Federal Steel owned the Minnesota Iron Company.

Q. I know, but through that ownership, did it have any ore other than that?

A. The Illinois Steel Company had some ore.

Q. Then the question is proper. Did the Federal Steel through all of its holdings, including the Minnesota Iron Company, have an insufficient supply of Old Range ore such as that in the Vermillion Range?

A. Excuse me. I did not mean to criticise your question, Judge. The Illinois Steel, as it turned out, did not have much of any ore. It had one mine that promised pretty well, but has been abandoned long since and did not amount to anything really. It did have a certain grade of ore called the Iron Ridge, near Milwaukee, an ore high in phosphorus and low in iron content, that is desirable for basic iron and will

be good, but it is not to be compared with many of the other ores.

Q. Did the Federal Steel Company have an insufficient quantity or supply of Old Range ore such as that in the Vermillion Range?

A. It did not have a sufficient quantity, although I thought at the time it did have a pretty good supply.

Q. At what time?

A. When the Federal Steel was organized.

Q. How long was it before you changed your view as to that?

A. I think the better I became acquainted with the situation. That ore situation has changed very materially during the last few years.

Q. Do you remember the agreement or the promise of rebate entered into between the Carnegie Steel Company and the Minnesota Iron Company about 1898?

A. I know of it and remember the circumstances.

Q. What was the effect of that?

A. Let me tell you first about that, Judge. It is only fair, I think. That was an arrangement by Mr. Porter with Mr. Harry Oliver, prior to the time of the organization of the Federal Steel Company. It was carried into effect, and I think the contract signed after the Federal Steel Company was organized.

Q. Was the effect of that to give a rebate of 35 cents a ton upon Vermillion ore to the Carnegie Company?

A. I think it was, Judge.

Q. Well, at that time, did you consider that the Federal Steel Company had an insufficient supply of Old Range ore, or did you discover that afterwards?

A. I had nothing to do with the making of the contract, and would not have made it under any circumstances. The Federal Steel should have had that ore, and probably would except it was limited in its supply of cash or cash resources, and Mr. Porter made that contract with a view of securing the transportation of the ore over the Duluth & Iron Range Railroad, which had been one of his pet projects, and which he had always particularly tried to protect. The Min-

nesota Iron Company had the privilege of buying that ore which Oliver got, a splendid proposition, and he let it go under those circumstances and made that arrangement. I came into the Federal Steel with that bargain having been made.

Q. Did you have anything to do with a subsequent arrangement, if you did not have with the original contract, by which the companies were enabled to pay something like $200,000 that had accrued for the year 1899?

MR. LINDABURY: I object to that because it assumes as a fact what is not proven.

A. I do not know what you refer to.

By MR. DICKINSON:

Q. I call your attention, and see if it refreshes your memory, to minutes of the Carnegie Company of June 6, 1900, Government Exhibits, Volume II, page 440, where Mr. Gayley says——

MR. LINDABURY: One minute, before that is read. I object to attempting to refresh the recollection of the witness by a minute which he did not make, which was made at a meeting at which he was not present by a corporation with which he had no connection, and which he never saw.

MR. DICKINSON: Still, it may refresh it, nevertheless.

By MR. DICKINSON:

Q. I will read:

"We have, in accordance with our estimate, at least ore enough in the Vermillion District for a twenty years' supply. The present general freight rate is $1.00. We have had an arrangement with railroad for some time to carry ore at rate of 60 cents, paying currently, however, one dollar per ton, but we have not been able to collect our money for the reason that there was no fixed method of payment and railroad feared rebating. Judge Gary thinks that if we make a contract as now proposed they can find a way to pay us the amount due us, which approximates $200,000.00, and make the further payments or rebates required."

Now, I will ask you, Judge, whether or not the $200,000 or any amount approximating the same was paid, and if so, under

what kind of an arrangement, and if it was in the nature of a rebate?

A. I have no recollection whatever in regard to it, Judge Dickinson.

Q. Judge, turn to page 441 of the same Volume II, running from pages 441 to 445, and look at the contract there. You notice, Judge, on page 441 that the parties to this contract are the Carnegie Company, the Oliver & Snyder Steel Company, the Federal Steel Company, and the contract runs for 40 years. Do you have any knowledge of that contract?

A. I have no recollection in regard to it.

Q. Were you a director at that time of the Federal Steel Company?

A. Yes.

Q. On page 443 occurs the following:

"When the quantity shipped in any three year period commencing January 1st, A. D. 1900, shall be less than 1,500,000 tons, 35 cents per gross ton."

That is referring to the payments. Have you any recollection of that?

A. No; I have no recollection whatever in regard to this.

Q. Or of anything being paid under such a contract and agreement?

A. No; I have not. I have no doubt Mr. Porter took charge of that. I might have signed the contract. I do not know that I did or did not. I have no recollection. I am very sure I had nothing to do personally with the negotiation.

Q. Did you know there was a rebating arrangement between those parties?

A. I have no recollection in regard to it. If I knew it, I do not remember it, Judge.

Q. Were you counsel for the Federal Steel Company then?

A. I was perhaps nominally counsel as well as president.

Q. You were the president of the company?

A. I was president, yes; but we had counsel outside.

Q. And if you had an agreement involving that amount of money for that period of time in regard to rebates, you have now forgotten it?

A. It seems to me, Judge, that I would have known it at that time.

Q. But you say you do not know one way or the other now?

A. No; I do not.

Q. On page 8771 of the typewritten record you say: "I will say the Illinois Steel could not successfully compete with the Carnegie Steel Company more than 100 miles east of Chicago, if it could at that distance."

Could the Carnegie Steel Company compete with the Illinois Steel Company successfully up to within 100 miles east of Chicago?

A. Well, it is very difficult, of course, to draw an exact line.

Q. I will say approximately, then.

A. It would depend a little upon what the product was. The Carnegie Steel Company had the advantage of the Illinois Steel Company a good deal; there is no doubt about that. That is what that line would determine.

Q. Well, it was approximately, then, up to within 100 miles east of Chicago that the Carnegie Company's competition pushed back the Illinois Steel Company, was it?

A. Well, I was asked to state a place, and I ventured that distance, without attempting to be accurate, or without knowing, now, just where the point would be. It is very difficult, where two companies are trying to sell in the same territory, or adjacent territories, to tell where the line is which divides where profit commences.

Q. Still, Judge, you did say that the Illinois Steel Company could not successfully compete with the Carnegie Steel Company more than 100 miles east of Chicago, if it could at that distance. Do you stand by that?

A. If it could at that distance?

Q. If it could at that distance.

A. That is rather an indefinite term. I had to be indefinite, as I must be now.

Q. That was approximately, then, the dividing line up to which these companies could meet each other in successful competition?

A. I don't know, Judge. I do not intend to state a thing

as accurate unless I believe it is accurate. I do not want to be driven into exact dates or into exact locations or lines exactly, unless I think I know. Of course you can understand that.

Q. I am trying to see how definite you meant that answer to be, Judge.

A. I am finding no fault. I am merely explaining my attitude.

Q. Really, then, do you know anything definite about that?

A. I know a good deal about the subject.

Q. Of course, but I mean as to where the line of successful competition of one would reach in respect to the other.

A. No; I think I would say no. I might give an opinion in regard to it.

Q. To what extent did the Illinois Steel Company make cotton ties at the time it was taken over by the United States Steel Corporation?

A. I have an impression that it was not making very many cotton ties at that time, but I might be mistaken. I do not think it was very profitable.

Q. Did it have the machinery for making cotton ties?

A. Yes, it had a cotton tie mill at Joliet.

Q. What was the capacity of it?

A. I have forgotten.

Q. But you think at that time it was not making many?

A. That is my recollection. Of course, it is very easy to be mistaken.

Q. Well, according to the best of your knowledge and recollection—of course you are speaking that way—did it cease to make cotton ties at any period prior thereto?

A. Oh, yes. It had made cotton ties, but my impression is that it was not making cotton ties at that time.

Q. How long a period was it during which it had not been making cotton ties?

A. I have no recollection whatever.

Q. I will ask you if you know that the Steel Hoop Company had an agreement with the Illinois Steel Company to pay them $150,000 a year to stay out of the cotton tie business, which was in effect at the time the Corporation was formed?

MR. LINDABURY: Which corporation do you mean?

MR. DICKINSON: The United States Steel Corporation.

THE WITNESS: I have no recollection of ever having heard of it. When was that made?

By MR. DICKINSON:

Q. All I know about it is what appears in the minutes of the Carnegie Steel Company, July 30, 1901. You were a director of that company at that time, were you not, the Carnegie Steel Company?

A. In 1901?

Q. Yes, July 30, after the formation of the Corporation?

A. Yes, I must admit it.

Q. Mr. Corey was president of it, was he?

A. Yes.

Q. He says, at page 921:

"American Steel Hoop Company.

"Mr. Corey: I find that the Steel Hoop Company had an agreement with the Illinois Steel Company to pay them $150,000 per year to stay out of the cotton tie business. Mr. Preston tried to have the contract cancelled the first of April, but failed, and agreed to continue it for the remainder of this year. I took the matter up again this week, taking the stand that all contracts were abrogated between the constituent companies as of July 1st. President Schwab agreed with me, so that we succeeded in having that agreement cancelled."

What do you know about that agreement, Judge?

A. I think you ought to have asked Mr. Schwab about that, because anything you want to prove, look in the Carnegie minutes.

Q. They have been a great help to us, Judge.

A. Do not hold me responsible for them.

Q. I thought, being a director, that you might occasionally have looked at them.

A. I have already said that I do not know anything about the directors' meetings, or their minutes, in those respects.

Q. But this is a question between two subordinate companies, is it not, if it existed; that is, between the Illinois Steel Company and the American Steel Hoop Company, both subor-

dinates of the United States Steel Corporation, were they not?

A. They were subsidiary companies, but they seemed to be in pretty active competition. There was not much suppression of competition there.

Q. Pretty active competition, with one paying the other $150,000 a year for not making cotton ties.

MR. LINDABURY: They abrogated that.

MR. COLTON: After July.

THE WITNESS: I don't know anything about it.

By MR. DICKINSON:

Q. You would not call that conserving competition and promoting competition, would you?

A. No, I would not say anything in favor of that, Judge. Of course I have tried to be very frank with you; there were a good many things in earlier days that I hoped had been entirely eradicated.

Q. Your plans after they began to develop towards the formation of this larger concern than the Federal Steel took on an aspect in which you were considering purchasing the Carnegie, I believe you stated.

A. Yes, sir.

Q. That was the first company that you considered purchasing?

A. Yes, when Mr. Frick came to my office.

Q. And that was the first step in this idea of rounding out the Federal and making of it a self-contained, complete, rounded out business proposition?

A. That was not any step; that was a suggestion, to buy that company.

Q. They did take that step, though, did they not?

A. Not at that time.

Q. I know, but later?

A. Yes, the purchase of the Carnegie, of course.

Q. But it was all, as I understand, based upon the idea of expanding the Federal?

A. Yes; it was.

Q. And rounding that out to make this complete proposition?

A. Yes.

Q. The Federal Steel capitalization was $100,000,000, was it not, paid in, or just a little short of that?

A. About that.

Q. Now the first thing that you proposed to round out the Federal with was by swallowing the Carnegie. What was the capital of that?

A. At that time?

Q. Yes, the capitalization?

A. I should think it was $160,000,000 of bonds and $160,000,000 of stock.

Q. That is right, $320,000,000.

A. Yes.

Q. That would round out a company of $100,000,000 to a considerable extent, would it not? It would have to let out its belt?

A. It would extend the plant and be a long step in rounding out the plan which we had in mind, as I have described.

Q. Now, then, as a part of the step of rounding out——

A. But Judge, you remember when we organized the Federal we had an authorized capital of $200,000,000. We issued about $100,000,000, and if we could have sold the other $100,000,000 at par we would have sold that stock and commenced to build finishing mills. Now, if we could have secured the Carnegie at the time Mr. Frick came to see me, and could have further increased the capital stock of the Federal Steel and exchanged stock for the Carnegie properties, it would have been a very good proposition and a very long step towards rounding out the plan which we had started upon.

Q. Another step in rounding out was acquiring the American Steel & Wire Company of New Jersey, with a capital of $90,000,000, was it not?

A. What I say of that I say of all the other companies taken in by the United States Steel Corporation.

Q. And the National Tube, of $80,000,000, and the rounding out by which the Federal expanded into a complete, round-

ed out, self-contained business proposition finally embraced a capitalization of $1,400,000,000, did it not?

A. Well, the figures are all in evidence; they all speak for themselves?

Q. That was the capitalization of the Steel Corporation?

A. What did the Carnegie begin with? What did all of these companies start from? Because a corporation starts from a capitalization of $1,000,000, or $1,000, and grows into a capitalization of $1,000,000,000 or $2,000,000,000, I do not see militates against it.

Q. How long was it that this Federal Company of $100,000,000 in this rounded out plan expanded into $1,402,000,000, just a few months, wasn't it?

A. Yes.

Q. Doesn't that remind you, the Federal taking in these other companies, of Aaron when he cast down his rod and it turned into a serpent, and all the Egyptians cast down their rods, and Aaron's swallowed them all up? At that time were not the Carnegie and the Illinois the largest producers of standard Bessemer steel rails in the United States?

A. Yes, I think so.

Q. Were not the Carnegie, the Illinois, and the National the three largest producers of billets in the United States?

A. I cannot answer that question now. I do not remember about it.

Q. Certainly the Carnegie and the Illinois were the two largest, were they not?

A. I should think the Carnegie was the largest, and the Illinois was a large producer of billets.

Q. Then the National was a large one, was it not?

A. I do not know that it ranked third. Perhaps you have the figures.

Q. Were not the Carnegie and the Illinois at that time the largest producers of plates in the United States?

A. The Carnegie was the largest.

Q. Was not the Illinois the next largest?

A. That I cannot answer. It may have been. My recollection now is that the Carnegie perhaps produced 250,000 tons a year and the Illinois Steel 100,000 tons a year. If I

am wrong and you have the figures, you will correct me of course; that is sheared plates. The Illinois Steel Company had no universal plate mill. The Carnegie Steel did.

Q. Judge, you testified in regard to a memorandum which Mr. Frick brought you, coming direct from the Rockefellers and which contained an amount which the Rockefellers had finally said they would take. What was the amount?

MR. LINDABURY: He did not say brought to him. I thought he said brought to Mr. Morgan.

THE WITNESS: He brought it to Mr. Morgan. Mr. Morgan showed it to me.

By MR. DICKINSON:

Q. The whole answer: "During these negotiations I remember Mr. Morgan asked me to make an estimate on the value of the Rockefeller ores, and in a somewhat crude way I attempted to do that, having before me then some figures showing quantities and knowing something about the ore properties in the Lake Superior region, and at a period later than that he showed me a memorandum which Mr. Frick had brought him coming direct from the Rockefellers, and which contained an amount which the Rockefellers had finally said they would take."

What was that amount?

THE WITNESS: I do not remember this case.

By MR. DICKINSON:

Q. Can you approximate the amount of it at all?

A. No.

MR. LINDABURY: I think it was the amount that they afterwards got.

THE WITNESS: Yes, except in closing the purchase we took on some additional things and paid them cash for it. That was the $8,000,000.

MR. LINDABURY: That was the $8,000,000 in favor of the Bessemer Steamship Company.

By MR. DICKINSON:

Q. Do you know whether the amount was $48,000,000?

A. It was more than that.

Q. Was it in money or stock?

A. In stock, I think.

Q. What would it represent in money?

A. I have forgotten now, but of course I would have to give you my impression, and I might be wrong. My impression would be $75,000,000 or $80,000,000.

Q. What was the outstanding capital stock, do you remember, of the Lake Superior Consolidated Iron Mines?

A. I do not.

Q. The payment was made in stock, was it?

A. Yes, I think except for the boats; they were $8,000,000, I think. Afterwards there was a contract drawn, it seems to me. Isn't that in evidence.

Q. I am trying to see what you recollect about it.

A. When it comes to figures that my attention has not been called to for a long time, and the dates, I can not always remember them.

Q. I show you a stipulation, not entered into by your counsel, but by Rockefeller counsel and us, and I ask you to look over that and state whether or not to your knowledge the facts there set out are correct.

MR. LINDABURY: I object to examining a witness by showing to him a statement made by some one else which he and his counsel have repudiated already, and with the making of which he had no connection, ever.

MR. DICKINSON: Well, I thought it might remind him.

MR. LINDABURY: It is not a proper way to remind the witness. Now, Judge, as a lawyer and a judge, do you want to stand for that sort of question, seriously?

MR. DICKINSON: We are all lawyers, all three of us.

MR. LINDABURY: I would like to appeal from yourself as counsel to yourself as judge, and ask you to pass on that question.

THE WITNESS: I spoke of all the Rockefeller properties outside the boats, and I do not think this $48,000,000 covers all the Rockefeller properties.

By MR. DICKINSON:

Q. How about the ore properties?

A. There is no use of my guessing at it, because I don't know, I don't remember.

Q. Do you know whether the offer was for cash or stock; that is to say, at which the amount was named?

A. My present recollection is it was for stock on a certain basis of value.

Q. Do you know what it was?

A. No. I mean by that I don't remember.

(Whereupon an adjournment was taken until tomorrow, Thursday, June 12, 1913, at 10:30 o'clock a. m.)

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 19[redacted] 1919

No. [redacted]

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

UNITED STATES STEEL CORPORATION ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

VOLUME 14.

DEFENDANTS' TESTIMONY.

FILED MAY 12, 1916.

VOLUME XIV.

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SEVENTY-FOURTH DAY.

EMPIRE BUILDING,
71 Broadway, New York City.

Thursday, June 12, 1913.

Before SPECIAL EXAMINER JOHN ARTHUR BROWN.

Present on behalf of the United States MR. DICKINSON and MR. COLTON.

Present on behalf of the Defendants, MR. LINDABURY, MR. SEVERANCE, MR. BOLLING and MR. REED.

ELBERT H. GARY,

the witness under examination at the taking of the adjournment, resumed the stand.

CROSS-EXAMINATION (Continued).

By MR. DICKINSON:

Q. Judge, did not the Carnegie Steel Company and the Federal Steel Company manufacture practically an equal amount of standard rails when they were taken over by the United States Steel Corporation?

A. I think so. I mean I think they had about the same producing capacity.

Q. Were they not producing pretty nearly the same?

A. That I cannot answer from recollection.

Q. And for a long time prior thereto those two had been the largest producers in the United States?

A. Yes; they had.

MR. LINDABURY: Of what, Judge?

MR. DICKINSON: Of standard Bessemer rails.

By MR. DICKINSON:

Q. Did not the Illinois Steel Company and the Carnegie Steel Company at that time manufacture and sell light rails both?

A. I do not know that the Carnegie did. I do not believe that company did to a very large extent at that time. My impression is that light rails were never very much in competition between those two companies.

Q. The Carnegie was in a position to manufacture them and did manufacture them at times, did it not, and could do so?

A. I don't think it was in a good position at that time to do so.

Q. Do you mean to say, so far as your knowledge goes, that they did not have the machinery and the ability at that time to manufacture light rails?

A. I mean to say my recollection is they were not then prepared to manufacture light rails to good advantage. I think they did make some light rails. But afterwards, I believe their facilities were improved.

Q. Judge, I call your attention to Government Exhibit No. 144, page 1444, Volume IV, being a statement furnished by the Corporation, which shows that in the year 1900 the Illinois Steel Company sold 64,552 tons of light rails; and on the next page, 1445, that for the year 1900 the Carnegie Company sold 37,684 tons of light rails.

A. If those figures are correct, and I will not dispute them——

Q. (Interposing) You would not put your recollection against those figures?

A. No. I say, if that is the fact, the Carnegie had got into the light rail manufacture more rapidly and to a greater extent than I had supposed.

Q. More rapidly and to a greater extent than you had thought?

A. Yes. I believe you will find that the Illinois Steel Company made their light rails largely from seconds of standard rails which were re-rolled.

Q. Still they were sold in the market as light rails, were they not?

A. Yes; they were, but——

Q. Did the Illinois Steel Company and the Carnegie Steel

Company at the time they were taken over by the Steel Corporation both manufacture and sell sheared plates?

A. Yes. I gave you yesterday about the proportion, as I remember it.

Q. There may be some little repetition, Judge, in some of these questions.

A. I ought to add with reference to light rails, I have no recollection of there ever being any competition between those companies in light rails.

Q. Did both the Illinois Steel Company and the Carnegie Steel Company at that time manufacture and sell sheet and tin plate bars?

A. Yes; I think so.

Q. Did both the Illinois Steel Company and the Carnegie Company at that time manufacture and sell structural material?

A. Yes; they did to some extent. As applied to the Illinois Steel Company, the Illinois Steel Company, I think bought its shapes largely from the Carnegie Company.

Q. And then fabricated them?

A. And then fabricated them.

Q. And sold them?

A. Yes.

Q. Did both the Illinois Steel Company and the Carnegie Steel Company manufacture, and, in periods of depression, sell billets, at the time or prior to the time they were taken over by the Corporation?

MR. LINDABURY: With these tables furnished by us, I am wondering what the object of this inquiry is, Judge. You have the exact facts here.

MR. DICKINSON: The Judge has given some testimony in regard to competition, and I just want to see how far it is based upon actual recollection. It is with that view that I ask.

THE WITNESS: I will say they both manufactured and sold billets in their respective markets.

By MR. DICKINSON:

Q. You say, "in their respective markets." Do you mean

to say they did not sell in the same market at any time prior to the time they were taken over by the Corporation?

A. No, I would not say that. I do not think the competition was very much. I do not believe they sold very much, if any, in the same territory.

MR. LINDABURY: This table does not show the Illinois made structural, Judge.

MR. DICKINSON: I never referred to the table in that respect.

MR. COLTON: The Universal Construction Company made some.

THE WITNESS: It bought its shapes and fabricated them. I do not think it manufactured structural.

MR. DICKINSON: I did not ask him about that table in respect to structural. It is only about light rails that I referred to that table.

MR. LINDABURY: It did not roll its shapes, but bought them.

MR. COLTON: It fabricated them.

MR. DICKINSON: He said it bought them and fabricated them, and then sold them in the market.

THE WITNESS: The Carnegie Company rolled billets, and they had sliding scale contracts with various people for the sale of billets, and I think those contracts took about all the billets they made.

By MR. DICKINSON:

Q. Do you know that to be a fact?

A. I know considerable about it, yes.

Q. Do you not know that during periods of depression both of them sold billets?

A. Yes, I do; but the only period of what I would call depression that I remember after the Federal Steel Company was formed was some time in 1903 and covering part of 1904. I was very familiar with the business at that time.

Q. How about the fall of 1900; was there a period of depression then?

A. Yes, there was.

Q. Did the Illinois Steel Company and the Carnegie Steel Company——

A. What year did I say previously?

Q. 1903.

A. I meant 1900, commencing the latter part of 1899 and ending with 1900. I referred to the period antedating the formation of the United States Steel Corporation.

Q. Were there not also periods of depression during the time that the Illinois and the Carnegie Steel Company were making and selling in competition?

A. Yes; prior to the organization of the Federal Steel, there were, indeed. It was all depression for many years.

Q. Did the Illinois Steel Company or the Carnegie Steel Company in periods of depression sell Bessemer pig iron in the market?

A. Yes, to some extent, I think.

Q. Did not the Illinois and the Carnegie Steel both manufacture and sell merchant steel?

A. I should think so, to some extent.

Q. You testified, did you not, in the Stanley hearings?

A. I did.

Q. I call your attention to a portion of your testimony there. While they are getting it I will read you this:

"Mr. Young (Interposing): Before you go on with that will you state what were the articles manufactured by these companies in the first group; what competing company did compete?

"Mr. Gary: I stated that the other day about as fully as I can. I would say that the principal competition was between the Illinois Steel Co. and the Carnegie Co., in the sense of making the same articles or some of the same articles; they were substantially in competition. I do not wish to minimize that. That is true in the manufacture of rails particularly. So far as products are concerned, they were in substantial competition, and I would say that those were the principal articles.

"However, as you know, the freight rates from Pittsburgh to Chicago are quite large, and I believe at that time were in the neighborhood of $3 per ton. The market of the Illinois Steel Co. was in the great and growing West largely. That is, they supplied largely the Western railroads who had

terminals in Chicago, and of course they did, to some extent, furnish rails to railroads which came from the East and had their terminals in Chicago, but the Carnegie Steel Company, in turn, had a natural market which surrounded its plant—that is, the railroads having terminals in Pittsburgh—and when you consider the respective territory or fields of the two, there was not so much competition as it would appear, although it is the fact that the Carnegie Company did in time come into the western field and into territories which were not controlled to the extent at that time at least of selling rails, I believe, as low as $16 a ton, at a time when the Illinois Steel Company was considering going into the hands of a receiver and came very near it. It did not pay any dividends, so far as I know, and I believe it did not pay any dividends at all, up to 1899."

Probably you would like to look over that, would you?

A. No.

Q. Do you recall giving that testimony?

A. I do.

Q. Were the facts then as you understood them and as you understand them now?

A. Yes; the statements may be further modified in that examination at different places, but I find no fault with that statement, except that one word "controlled." That is wrong. It should be "adjacent."

MR. DICKINSON: I would be very glad to have your counsel change it if they want any modification.

THE WITNESS: No doubt I made that statement, in substance. Of course the time I referred to when the Carnegie was selling rails or trying to sell rails in the Chicago market, and the time when the Illinois Steel Company was very near receivership, was back in about 1896.

By MR. DICKINSON:

Q. I think you gave the date. It was 1898, wasn't it?

A. No; 1896 or 1897, I think.

Q. I will read further.

"Mr. Bartlett: Right there. When was the Federal Steel Company formed?

"Mr. Gary: In 1898.

"I believe, perhaps, if unrestricted and unchecked destructive competition had gone on the Illinois Steel Company would undoubtedly have been driven out of business and, perhaps, I might say more. I do not say it with a view of casting any reflection upon any one's management, but it is not at all certain that if the old management or the management which was in force at one time had continued, the Carnegie Company would not have driven entirely out of business every steel company in the United States. Perhaps you are sufficiently familiar with the facts to determine whether that is a justified statement, but certainly that is the opinion of a great many different people, notwithstanding conditions had improved after the Federal Steel Company was formed and everyone was getting on a better basis and we had reached the point where we saw it was possible to organize a company which would be self-contained and which would, as I have said, secure a very large proportion of the export business."

You testified to that?

A. I did.

Q. The opinion you express there, do you entertain it now?

A. Yes; except perhaps I do not quite comprehend what is said about the export business.

Q. I am referring now to what you stated about the Carnegie.

A. Yes. I referred to the methods which have been shown in evidence here partially at least.

Q. Now, on page 221, just below there, it proceeds:

"Mr. Young: While these two companies, the Illinois Steel Company and the Carnegie Steel Company, each had its field, is it not, nevertheless, true that if the Carnegie Steel Company had reduced considerably its price for rails, for instance, that it would have necessitated a corresponding reduction on the part of the Illinois Steel Company in its field?

"Mr. Gary: Of course, that is true. If any manufacturer of any importance reduces the price of its commodity, others are compelled to reduce their prices. There is no doubt about that. As I say, it is generally the small manufacturer——"

And there you stop.

A. I testified to that.

MR. LINDABURY: There he was interrupted, you should say. It shows he did not stop voluntarily; whatever significance that may have.

THE WITNESS: I think, Judge, you ought to perhaps read the next question and answer in connection with that.

By MR. DICKINSON:

Q. You read it if you desire.

A. After I was interrupted Mr. Young said:

"Would not that be true, as a practical question, although the reduction of the Carnegie Steel Company did not equal its freight rate to Chicago; would not the moral effect of that, assuming that the freight rate from Pittsburgh to Chicago was $3 a ton and there had been a cut of $2 a ton by the Carnegie Company, which would not enable them to put their rails into Chicago as cheaply as the Illinois Steel Company was selling them at, yet would not the moral effect compel the Illinois Steel Company to cut its rate?

"Mr. Gary: That might be so. I am not sure about that. I do not know that I am qualified to answer that."

That whole testimony perhaps needs a little explanation.

Q. Do you want to add something now, some explanation?

A. Yes.

Q. You may do it, subject to exception. Go ahead.

A. Certainly. The Illinois Steel Company had its customers amongst the railroads, as the Carnegie had its, and those railroad companies would buy their rails of those particular mills if they could consistently do so; but if the Carnegie Company would offer to sell rails in the Chicago district at a certain price, then the Illinois Steel Company would ordinarily be compelled to sell its rails to that railroad company at that price with the freight added from Pittsburgh to Chicago; so that in that sense the reduction by Carnegie would compel a reduction by the Illinois Steel; and if, as in one season when the Carnegie was pushing a war to the death, as I would express it, they sold a quantity of rails in the Pittsburgh district at $16, and I think——

Q. (Interposing) You mean in the Chicago district?

A. No, I meant in the Pittsburgh district, and I think of-

fered to sell them in Chicago at about $18. I may be mistaken as to the figures. I doubt if they offered many, if any, at less than $18 in the Chicago district, but they may have offered some. Anyhow, that did have a very material effect on the prices of the Illinois Steel, I am willing to admit, and in order to get the business of the railroads and treat their customers as they would consider fairly they did have to sell rails at a price below their cost, and they were fast getting into bankruptcy because of that and other competition.

Q. While primarily a railroad company would buy from a manufacturer on its own line from whom it got business, nevertheless they would also have to consider the question of price, and if a price was offered materially cheaper by a concern off their line the concern on their line would have to meet that price or lose that business?

A. Ordinarily that, or practically that price.

Q. Did you know the average price from January 1st to December 31st, 1898?

A. Whose price?

Q. The Carnegie.

A. I think they sold a great many rails at $16.

Q. Could you give any statement as to the average price for that year at which the Carnegie sold?

A. Not from recollection, but I would not be at all surprised if it was $17 or $17.50.

Q. It shows here, page 1178, Volume III, Government Exhibits, that it was $17.38. That is pretty near the figure you give.

A. It does not surprise me at all. I know their methods at that time.

Q. Do you know whether they were making or losing money, of your own knowledge, at that time?

A. I think they always made some money. They had quite a diversity of products, and in that respect, of course, they had quite an advantage. A concern can sell one product at cost or below cost while making a profit on others. It might sell one commodity in one foreign market at cost and make money in sales at other markets.

Q. Do you know of your own knowledge that at that time they were not making money on rails?

A. I feel very certain of it.

Q. Do you know what their cost sheets were at that time?

A. I knew something about that.

Q. In a general way?

A. Yes, in a general way. I was pretty well posted, and I am very familiar with the Schwab letter, so-called, and have heard his statement since concerning that letter many times.

Q. Judge, would you be surprised to know that during that year of which we have spoken they regarded, among themselves and their directors, that their rail business was the best business they had, and reported a profit?

A. I do not know that I would. I think their profit on rails which they claimed was largely a bookkeeping profit. That is my impression about it.

Q. Did you see the books at that time?

A. Oh, no, I did not; but I talked with different officials. I was very well acquainted with John Leishman, and I knew other people. I know how easy it is to show profits one year or two years, when actually there are no profits, because the books are not kept as they ought to be; the depreciation charges and overhead charges and other charges are not properly entered. It is a great habit, or used to be particularly a great habit, of some manufacturers to claim profits when they did not actually realize them.

Q. You mean among themselves?

A. If you are speaking of the Carnegie, I would say there might have been that habit, in speaking for the ear of Mr. Carnegie or his entertainment in reading their discussions when some of them were together.

Q. Judge, I call your attention to Volume III, Government Exhibits, page 1144——

A. I should say, in justice to Mr. Carnegie and his people—because I certainly do not want to deal in personalities that might offend them—that their methods very materially changed after 1897, and Mr. Schwab was a great factor in improving those methods.

Q. I am not referring now so much to methods, as to the

question whether or not the rail business was a profitable business, and as to whether or not you know yourself that if was or was not. Then I was going to call your attention to a statement made by Mr. Frick.

MR. LINDABURY: One moment, Judge, before you go on with that——

By MR. DICKINSON:

Q. It is only on the question of whether you, yourself, know that that business was an unprofitable business to the Carnegie during the years 1897 and 1898?

A. From a lawyer's standpoint, from your standpoint, I would answer in the negative.

Q. Yes. Then I will not pursue that any further. Judge, was the National Steel Company, at the time it was taken over by the Corporation, a company that had its ore?

A. Yes; the National had ore.

Q. And it had furnaces?

A. Yes.

Q. And made pig iron?

A. Yes.

Q. And then the steel ingots?

A. Yes.

Q. And then various kinds of finished products and semi-finished products?

A. It made some finished products.

Q. Some semi-finished and some finished products?

A. Yes.

Q. Take the American Steel & Wire Company of New Jersey; did that company have its ore, coke and coal?

A. Well, it had some ore, and I think some coke. It had some coal property, anyway. I believe it had got into the coke business to some extent.

Q. And coal?

A. It had some coal. I do not know whether it had any steam coal. Yes; I believe it did.

Q. Did it not have ore and coke and coal holdings in proportion to its then manufacturing capacity at the time it was taken over by the Steel Corporation?

A. I do not think it did have ore.

Q. It had blast furnaces and steel plants?

A. Yes; it had some.

Q. Some built and some being built at the time it was taken over?

A. Yes, sir; I think so.

Q. Did they make semi-finished products and also finished products of various kinds?

A. Yes.

MR. LINDABURY: You mean semi-finished products for sale or for their own use?

By MR. DICKINSON:

Q. Did they make semi-finished products and then did they make finished products for sale?

A. Yes; they converted their iron into steel, semi-finished steel, and their semi-finished steel they converted into finished steel. Their business was almost altogether in the manufacture and sale of finished steel.

Q. But, from the ore to the finished product which they sold?

A. Yes; although I am very sure they bought a good deal of ore.

Q. Didn't they have a large mine in the Mesabi region?

A. Yes. They had one particular plant there of not a very high grade of ore. I am sure they did not make iron from that mine alone.

Q. But they did have ore.

A. I was trying to think of the name of that mine—no matter.

Q. Wasn't it estimated, at the time they took it over, that with the plant they had, and with the plant in process of construction they would have a sufficient quantity of steel to practically cover their entire requirements?

MR. LINDABURY: I object to that. Estimated by whom?

MR. DICKINSON: By the chairman of the Board of Directors.

MR. LINDABURY: How could the Judge know that? He was not on the board.

MR. DICKINSON: But the Judge inquired into these properties when he bought them, and it is in the annual report of the company. I am assuming he made investigations into the character of the properties he was taking over.

MR. LINDABURY: So you may, but you haven't any right to assume that he saw an estimate that the president made some time or other.

MR. DICKINSON: I was just asking him whether he did or not. If he did not he can say so.

MR. LINDABURY: I am not objecting to your asking whether he had not heard at the time it was taken over, or before, of an estimate that was made, but that is not the question.

THE WITNESS: I answer that I do not know what his report was, but I remember in the fall of 1899 selling to John Gates for his companies 100,000 tons of rods; and I remember in 1900 selling him for his companies a very large tonnage, I think 100,000 tons, of billets. They were certainly very large buyers of semi-finished steel.

By MR. DICKINSON:

Q. How about 1900?

A. I said I remember the sale of those billets.

Q. In 1899?

A. No, the rods were 1899 and the billets were 1900, the summer of 1900, I think. I remember those two contracts particularly, single contracts.

Q. They made a very large proportion of their requirements, did they not?

A. Yes; they made billets. I have forgotten just how many. I am very sure we did not consider the wire company a competitor in respect to the Federal Steel.

Q. Wasn't it a very prosperous concern when it was taken over?

A. Up and down I would say. Perhaps you remember, because it was public notoriety during 1900, the wire company shut down 17 mills in one day. They declined to pay the Federal Steel an indebtedness of a very large sum of money, I think approximating a million dollars, because they were unable to pay, and we had to wait a long time before

we got our money. One of the troubles of the company was that it was exploited more or less, if I may use the term. As a manufacturing proposition it was a very good proposition, but there were some people connected with it that did not utilize it to the best advantage, and who were not calculated to really promote the best interests of the company.

Q. Mr. Edenborn was connected with it, wasn't he?

A. Yes, a very good man.

Q. And he became a director of the United States Steel Corporation?

A. Yes, a very good man.

Q. And Mr. Clifford?

A. Yes, a very good man.

Q. Now connected with the Steel Corporation?

A. Yes.

Q. And P. A. B. Widener?

A. He was in a very short time.

Q. He was at the time you took it over?

A. Yes.

Q. And became a director of the United States Steel Corporation?

A. Yes. He had nothing to do with the management of the Wire Company, and in fact Edenborn and Clifford had very little to do with it at the time we took it over.

Q. How about Ellwood and Lambert?

A. How about them?

Q. Yes; you spoke of these other men.

A. I have not characterized them. You do not want me to characterize them. I have nothing to say against them. Colonel Ellwood is dead. Mr. John W. Gates was the dominant factor there, and he is also dead, and I do not want to say anything against him at all, but his ideas of business management were a little different from the ideas of the men who are now in control of the iron and steel industry of this country, and in saying that I do not want to intimate that he did not believe he was doing the right thing.

Q. Do you know anything about their cancelling any contracts in the fall of 1900 for semi-finished steel?

A. They attempted to cancel them.

Q. Was it done?

A. No, not with us.

Q. How about with the Carnegie?

A. I think the Carnegie submitted; that is my recollection; we would not.

Q. They had cancelled them with the Carnegie?

A. I think they had.

Q. How about with the National?

A. I do not know.

Q. Judge, I call your attention to the Tariff Hearing before the Committee on Ways and Means of the House of Representatives, Volume No. 37. Have you a copy of it there; page 5518. While they are getting it I will read this to you, from your testimony; you did testify before them?

A. Yes.

Q. (Reading):

"Mr. Cockran: But what I want to direct your attention to is this: In 1901 was there not a fear of a steel war coming from Mr. Carnegie's announcement that he was going into the tube business?

"Mr. Gary: Yes; and that he was going to build a railroad from Pittsburgh to New York, and so forth.

"Mr. Cockran: One result apprehended from that was a cutting of prices of rails, among other things, was it not?

"Mr. Gary: No.

"Mr. Cockran: Was not that one of the things apprehended?

"Mr. Gary: No; I do not think the price of rails changed.

"Mr. Cockran: Was not there a fear of a general steel war?

"Mr. Gary: Yes, there was a fear, but there was no change in the prices.

"Mr. Cockran: I do not say there was a change, but a change apprehended.

"Mr. Gary: I misunderstood your question.

"Mr. Cockran: I understand there has been no breach in the price of rails, but I asked this question: Was there not in——

"Mr. Gary (Interrupting): There was apprehension of trouble.

"Mr. Cockran: And it was to quiet that apprehension and remove the doubt that the Steel Corporation was formed?

"Mr. Gary: That was one of the governing motives, I think, on the part of Mr. Morgan. It was not mine, Mr. Cockran; not at all.

"Mr. Cockran: I understand that. I am speaking of the men who formed it.

"Mr. Gary: I think I had as much to do with forming it as any one.

"Mr. Cockran: From that time down to this the price has never been disturbed, and, as you testified to Mr. Clark, if anybody should undertake to disturb it now you are in a position to make it unpleasant for them if you want to.

"Mr. Gary: Yes, of course."

Judge, did you testify as there recorded?

A. Judge Dickinson, I do not think I ever read that testimony after it was written up. I am not sure that I said exactly what is reported there, but I am not disposed to dispute it. The main inquiry there was totally different from this, as you know. I was summoned there by letter to testify to a particular thing, and that was with reference to the costs of production in this country and abroad. Now, the query there by Mr. Cockran, which was aside from the main inquiry really related to what was in Mr. Morgan's mind at the time the Steel Corporation was formed. At that time, or certainly after the Steel Corporation was formed, there were various reports in newspapers and magazine articles concerning the attitude of mind of Mr. Morgan, and I had heard them say once, I don't know when, that he expected Mr. Carnegie would build a railroad from Pittsburgh to New York, and I gathered the idea at that time that he was more or less concerned about that because of his railroad interests. Now, at this inquiry you refer to you will see that I particularly said that I had some question of trade war in my mind, and that the most that I was willing to admit, I will put it, because I was not there to affirmatively testify to that fact, was that Mr. Morgan may have been influenced in the way that Mr. Cockran was insisting. So far as the trade war was concerned there was always a trade war threatened, as there is now. I cer-

tainly was not asked as to whether there was a particular trade war threatened at the time the Steel Corporation was formed, because there was not any so far as I knew, and so far as I now believe, the steel business was prosperous.

Q. Now, Judge, please say whether or not you gave the testimony to the questions as I have read them and the answers as I have read them.

A. I thought I had answered that.

Q. You stated the facts as you understood them and believed them?

A. Yes.

MR. LINDABURY: I understood him, Judge, to state he had not read this over.

THE WITNESS: No, I did not, but there is that record, and written up, and I do not want to be in the position of disputing it. I think you will find further along, if you will read further, that something was said about the National Tube, and I said that certainly the building of the National Tube was not in my mind. I have no recollection of having heard of any such threat myself.

By MR. DICKINSON:

Q. You are pretty familiar with this?

A. Yes, I have read this through.

By MR. SEVERANCE:

Q. You do not mean the building of the National Tube? You mean the building of tube works by Carnegie?

A. I mean to say, after this was written up and before this was printed I did not have an opportunity to correct my testimony. I did not intend to say I have not read this record, because I have.

MR. LINDABURY: Judge, you spoke of the National Tube. You meant Carnegie's proposed tube works?

THE WITNESS: Yes, Carnegie proposed to build a tube works.

By MR. DICKINSON:

Q. Judge, you were familiar, were you not, in a general way, with the American Steel & Wire Company?

A. At that time?

Q. At the time it was taken over by the United States Steel Corporation?

A. I knew very little about it.

Q. You knew where the works were?

A. I certainly knew where a good many of them were.

Q. You knew most of the concerns that went into the American Steel & Wire Company, did you not?

A. A good many of them. I do not know anything about that company from the time I left Chicago until about the time we took them over, except in my dealings with them at arm's length as seller and purchaser.

Q. Did you know anything as to whether or not these concerns that had been taken over by the American Steel & Wire Company were, when they were put together in that company, in competition with each other?

A. Did I know it when?

Q. Did you know it at the time you acquired these properties, or at the time they were taken over? It was a matter of public history, was it not, when the company was formed by Mr. Gates?

A. I knew that some of the wire companies had been in competition, yes.

Q. You were with the American Steel & Wire Company of Illinois that went into it?

A. Yes.

Q. And you know the various concerns that went into it?

A. Yes.

Q. Were they not concerns that, at that time, when the American Steel & Wire Company was formed, were competitors in interstate commerce?

MR. LINDABURY: The American Steel & Wire Company of Illinois, do you mean, now, or the American Steel & Wire Company of New Jersey?

MR. DICKINSON: The American Steel & Wire Company of New Jersey.

MR. LINDABURY: I wish you would add that, then, when you ask the question; otherwise it is a little confusing.

MR. DICKINSON: Yes.

THE WITNESS: You do not distinguish, Judge, to my understanding, between the different companies and the different times. If you would be a little more specific, Judge, I shall try to answer.

By MR. DICKINSON:

Q. At the time the American Steel & Wire Company of New Jersey was formed, you knew the constituents that went into it?

A. I knew some of them; I knew a good many of them.

Q. You knew that the American Steel & Wire Company of Illinois went into it?

A. Yes; I knew all about that.

Q. And you knew who the competitors of that company were, did you not?

A. Who were the competitors? If you will name one that you think was a competitor, I will tell you what I think about it. I do not believe there was very much competition between——

Q. You had been with that wire company for a long while?

A. Yes.

Q. You knew where they had their trade and their business?

A. Yes. I do not think they had so very much competition.

Q. Were they or not in competition with any——

A. With whom?

Q. With any other of the constituents that went into the American Steel & Wire Company of New Jersey.

A. With whom, for instance? With what company?

Q. I am just asking you if you know.

A. They were to some extent, yes. I will say they were, I think, with the western branch of the Washburn & Moen Company.

Q. They were selling nails and wire all over the country, were they not—barbed wire?

A. Well, "all over the country" is a pretty broad term. They were selling largely.

Q. All through the middle west, were they not?

A. Yes; they were selling in the West and Northwest and Southwest. There is no doubt about that.

Q. And some of these other concerns that went into the American Steel & Wire Company were also selling——

MR. LINDABURY: Are you referring to the American Steel & Wire Company of New Jersey, now, Judge?

MR. DICKINSON: Yes; of New Jersey.

MR. LINDABURY: Please add that. Otherwise I am afraid the witness will misunderstand.

MR. DICKINSON: Yes; that is right.

THE WITNESS: The Western Department of the Washburn & Moen Company, I should say was, certainly.

By MR. DICKINSON:

Q. How about the Oliver & Snyder Company?

A. I do not know.

Q. Do you know what capacity the American Steel & Wire Company of New Jersey, at its formation, controlled, of the business that was done in their lines?

A. No; I do not remember the percentage.

Q. Do you know what percentage they controlled in the way of wire fencing?

A. You mean woven wire?

Q. Take barbed wire, and give us that, and then take woven wire and give us that.

A. There is a great difference, I should say. Also it depends upon the class of woven wire. The Page Woven Wire has always been successful and has a line of its own, has a kind of woven wire fencing that is peculiar to its company. The American Steel & Wire Company, going back to the Consolidated, had a woven wire fence called the American; and then there were others that had different lines. Of course they were more or less in competition, I suppose, but as a rule, the woven wire fence that was adaptable to one thing, manufactured by one company, was not adaptable to another. Take the Page woven wire fence. It was a very good fence for certain things, including chicken yards, and things of that kind; it was small; whereas the American fence would not be appropriate; it would be too large and too expensive.

Q. Leaving out woven wire, how about barbed wire? Do you know anything about the proportion of barbed wire they controlled at that time?

A. No, I do not; but I know now by the figures that at the time the Steel Corporation was formed the American Steel & Wire had about 62 per cent., maybe 64 per cent., of the wire nail business; it is much less now.

Q. Judge, in your opinion, and using the terms in the way in which you have used them in your direct examination, when would a percentage, if ever, in your estimate, represent a tendency towards monopoly and restraint of trade?

A. I am not quite sure that I comprehend your question.

(By request the stenographer repeated the question.)

A. I should say that depends entirely upon circumstances. I do not think you can determine that by percentages.

Q. If any concern absorbed all in a line of business, I suppose you would say that was a monopoly, would you not, in restraint of trade?

A. I don't know. That is equivalent to asking me if the whole of a thing constitutes monopoly or means monopoly.

Q. Yes. You would say yes to that, would you not?

A. Judge, I am no more able to give you an accurate definition of the word monopoly than the members of the bar generally, or the courts. If there is a decision which tells you or me what constitutes a monopoly I should like to be referred to it. I think it must depend upon the facts, of course. If you want to ask me what I think would be safe for a manufacturing concern at the present time, in view of all the information I have, to maintain as a percentage in order to avoid the danger of being charged with being a monopoly, I might give you an opinion.

Q. I did not ask for that, because I think it would simply consume time. If you want to volunteer it, I will not stand in the way of it.

A. No, I do not.

Q. I only want to ask you: In 1901 what percentage of business which was done by one concern, which put together competing companies, would constitute a monopoly or restraint

of trade, or a tendency to monopoly, if you have any opinion or judgment on that subject?

MR. LINDABURY: Do you mean in the steel business, or any business on the face of the earth?

MR. DICKINSON: In all the various products of iron and steel.

MR. LINDABURY: The iron and steel business; not in tobacco, oil or sugar?

MR. DICKINSON: No, I am not reviewing the decisions of the Supreme Court.

THE WITNESS: Of course, it would depend upon circumstances, upon location, upon the commodity. It is so easy to start in some lines of steel; it does not cost very much to build some mills or get into some lines of the steel business. There are steel mills and steel mills all over this country, and as soon as any particular line of that industry is prosperous then new concerns come into it.

By MR. DICKINSON:

Q. Did you have a defined idea in 1901, at the time the Steel Corporation was formed, as to what percentage of control of the company in the trade which had brought together competing companies would be in restraint of trade? Did you form any standard in your own mind as of that time by which to judge? If you did, I would like to know what it was.

A. No, I did not form any standard of the exact percentages. Our intentions, as I believed, were so good in regard to that, I will say, or so free from any bad intentions, that I never considered and never had any reason for considering what percentage it would be safe for us to have in order to avoid being charged with being a monopoly.

Q. You were not considering that question at all, then, as of that time, in respect to the formation of the Steel Corporation and in respect to the various concerns that it took over?

A. I will say at that time, no. Some time after, in ascertaining more particularly the figures in regard to the relative percentage of certain lines which the Steel Corporation had,

it seemed to me that it would be unwise for us to extend those particular lines and keep up those percentages.

Q. But at that particular time you did not have in mind any standard or test for considering the question of whether or not your judgment would go one way or the other on the question of whether a thing was a monopoly or in restraint of trade?

A. I must admit that I did not. I did not know the percentages which the companies we took over had of the business. I did not know how much competition there was, how many other companies there were, what their capacities were, what their percentage was. My attention was not called to it, nor was the attention of any of our people, so far as I know. We did not discuss that question.

Q. In respect to that matter as to whether or not the American Steel & Wire Company was a monopoly or in restraint of trade, did you consider that at that time?

A. No. I knew enough about that company to know that it had a large capacity, and to believe it could be made very successful and could be utilized to very great advantage, that it had many very good mills. I cannot deny that and never wanted to deny it.

Q. We had yesterday the question of an effort made to put together certain companies in 1897, which failed through the action of Mr. Coster, representing J. P. Morgan & Company. Those concerns were competitive companies, were they not?

A. Yes, they were.

Q. And afterwards went into the American Steel & Wire Company of New Jersey?

A. I should say many, if not most of them.

Q. You were asked whether or not investigations had been made by authority of Congress, and the question was asked you as follows:

"The Federal Steel was investigated with these others, was it not?"

And you answered,

"Well, if you call it an investigation.

"Q. Its organization was inquired into and publicly developed, was it not?

"A. Yes, it was.

"Q. And was that true of others of them?

"A. Yes."

Now I will ask you if it was not also true in regard to the Standard Oil Company?

A. If I ever knew anything about that I have no recollection.

Q. Was it true in regard to the American Tobacco Company?

A. The same answer.

Q. And in regard to the Du Pont Powder Company?

A. The same answer. Is it true of them? I ask you.

Q. I am asking you whether you know?

A. No. That is, by that you mean the Industrial Committee?

Q. Yes.

A. No, I have no recollection, no knowledge, or if I ever had any knowledge I have forgotten.

MR. LINDABURY: Suppose you put in their report.

MR. DICKINSON: It is too voluminous.

MR. LINDABURY: We will not object on that ground.

By MR. DICKINSON:

Q. Did not in all cases of the taking over of the several constituents by the United States Steel Corporation the larger part in interest of the holders of the securities of the several companies taken over occupy in that transaction the dual position of vendors and vendees, and did not a number of the most important men in the whole of the companies taken over go over into the organization of the United States Steel Corporation?

MR. LINDABURY: I object to that question because it is framed up argumentatively and for the purpose of putting an artificial construction upon the act of merely exchanging one stock for another.

THE WITNESS: Taking the whole question together I should answer it in the negative, in my opinion. You ask me

for a legal conclusion, and I probably would not agree with you. If you will ask me as to any specific fact, I will give you my best knowledge and information in regard to it.

Q. I will take it up more in detail. Take the Federal Steel. Did not the majority in interest of the holders of securities of the Federal Steel Company exchange their holdings for stock of the United States Steel Corporation in payment for their holdings in the Federal?

A. Yes.

MR. LINDABURY: It is admitted in the record in this case that the majority of all the stockholders of all the subsidiary companies did that.

By MR. DICKINSON:

Q. That is true, is it?

A. Yes, I was going to answer that is true of the other companies.

Q. Did not the leading men, or some of the leading men in the Federal Steel, become officers or directors of the United States Steel Corporation?

MR. LINDABURY: That already appears. I object to it.

THE WITNESS: Most of them, and that is true of the directorate. The directorate was largely made up of Federal Steel people, I think.

By MR. DICKINSON:

Q. Isn't it also true that in respect of some of these companies, whereas some of the leading men may not have become officers or directors of the United States Steel Corporation, they did continue or become officers of the several subordinate companies with which they had been connected. If that is too general, I will take them up separately and ask you about them.

A. That is too general. I do not think it is true generally.

Q. Take the Carnegie Company. Did some of the officers and stockholders of that company become officers or directors of the United States Steel Corporation?

A. Mr. Schwab, yes, and Mr. Gayley.

Q. How about Mr. Frick?

A. No, Mr. Frick never became an officer of the Steel Corporation. He went on the directorate, and years afterwards became a member of the finance committee.

Q. How about Henry Phipps?

A. Henry Phipps became a member of the board of directors either at that time or later, and years afterwards became a member of the finance committee, many years afterwards.

Q. Did not some who had been stockholders or officers of the Carnegie Company continue with the Carnegie Company as such after it was taken over by the United States Steel Corporation?

A. Oh, yes. In the main, the subordinate officers of many of the subsidiary companies remained in their positions, and in some cases at least, many, I should say, all the officers remained. In fact, it was our effort to continue the organizations of subsidiary companies.

Q. Were they not in the main also stockholders of the subsidiary companies before they were taken over, and did not they become stockholders of the United States Steel Corporation?

A. I should doubt that. I think most of them have become stockholders since and are stockholders now, but at the time the Steel Corporation was organized I do not think many, if any, of the stockholders of the subsidiary companies became stockholders of the U. S. Steel Corporation. I might be mistaken, of course.

Q. Now, let us take the Federal Steel. What would you say as to that?

A. The Federal Steel was the company that grew into the U. S. Steel Corporation, and I have not intended to say that the Federal Steel officers did not come into official positions of the United States Steel. They did, and they became stockholders also of the U. S. Steel Corporation.

Q. I did not understand you to say it, but as your answer was so general I started with the Federal, so as to begin. As to the Federal Steel it would be true that the majority in interest of stockholders of that company became stockholders of the U. S. Steel Corporation, and that the most

prominent men in the management of the Federal Steel Company became either officers of the United States Steel Corporation or continued as officers of the Federal Steel Company?

A. I should think that is true.

Q. Now, answer the same question in regard to the National Tube.

A. I do not think it is true. I do not think it is true of any of the other companies. I think most of the stockholders of the subsidiary companies, after they had exchanged their securities for the securities of the United States Steel Corporation sold their stock.

Q. Well, take Mr. Converse; he was with the National Tube, was he not, when you took it over, Mr. E. C. Converse?

A. Mr. Converse is or has been a large stockholder. If he has continued as stockholder of the United States Steel Corporation I do not think the books show it.

Q. Didn't he become a stockholder and exchange his stock in the National Tube for the stock in the United States Steel Corporation?

A. Of course, Judge, nearly all of the stockholders of subsidiary companies exchanged their securities for the securities of the United States Steel Corporation and thereby became stockholders, but I thought you were asking me if they retained that stock?

Q. No. I did not say retain it. I do not want to know how long they retained it. Didn't he become a director of the United States Steel Corporation?

A. He certainly did, and a member of the Executive Committee.

Q. Take the American Steel & Wire Company of New Jersey; was Mr. Widener prominent in that company?

A. No.

Q. He was a director in it?

A. Yes; he was a director, a very short time.

Q. He was a stockholder, wasn't he?

A. I don't know.

Q. He became a stockholder of the United States Steel Corporation, didn't he?

A. He did, in subsequent years. I did not know that he did very much for some years, but afterwards he did.

Q. Wasn't he one of the underwriters?

A. I think he was; I do not know to what extent.

Q. How about Mr. Clifford?

A. Mr. Clifford exchanged his stock for U. S. Steel, and I think kept it a while and then sold it, and then years afterwards bought some of it back and is still a stockholder.

Q. And did he hold any office?

A. Afterwards?

Q. As a director?

A. No, in neither company.

Q. Was he a director in the United States Steel Corporation?

A. Oh, yes; he is a member of the board, but he did not become a member of the board of directors at that time.

Q. William Edenborn was a member of the American Steel & Wire Company?

A. Yes.

Q. A prominent man?

A. Yes, he was. I say "prominent"; I do not think he was ever very prominent in the American Steel & Wire Company of New Jersey, although he was a member of the executive committee, so-called.

Q. And then became an officer of the United States Steel Corporation?

A. No; he became a director and a member of the executive committee.

MR. LINDABURY: Both of you, I think, are using the word "prominent" in the sense of active, are you not?

MR. DICKINSON: I will drop the use of the word "prominent."

MR. LINDABURY: What you both mean is: The Judge means he was not active the last few years.

THE WITNESS: Yes; a prominent man, but not prominent in the company.

MR. LINDABURY: Not prominent actors.

By MR. DICKINSON:

Q. Take the National Steel; were there any who were di-

rectors or officers of the National Steel that became directors or officers of the United States Steel Corporation?

A. Directors, yes.

Q. Who were they?

A. D. G. Reid and W. H. Moore.

Q. They were very influential in the National Steel, were they not?

A. They were.

Q. Take the American Tin Plate; I will repeat the same question. What would your answer be?

A. It would be the same answer, I should think.

Q. They were the same men, weren't they?

A. The same men.

Q. Coming back to the Carnegie, which I did not finish with, Mr. Phipps became a stockholder, did he not, in the United States Steel Corporation?

A. He exchanged, yes.

Q. I am not speaking of how long they held it, Judge.

A. He exchanged his securities.

Q. Mr. Frick became a large holder, did he not, by that exchange?

A. Yes.

Q. And Mr. George Lauder?

A. He exchanged.

Q. Mr. C. M. Schwab?

A. Yes.

Q. W. H. Singer?

A. I think all of them except Mr. Carnegie exchanged their securities.

Q. A number of those men who had been with the Carnegie as officers or directors, and who exchanged their securities became officers or directors of the United States Steel Corporation, or continued as officers or directors of the Carnegie, did they not?

MR. LINDABURY: One or the other?

THE WITNESS: Yes, one or the other.

By MR. DICKINSON:

Q. And in some instances both, did they not?

A. Yes, in two instances. That is, by two instances I do not mean all three, but I mean Mr. Schwab and Mr. Gayley became officers, and Mr. Schwab a director in the United States Steel Corporation, and——

Q. And Mr. Corey?

A. That was long afterwards. Afterwards Mr. Gayley became a member of the Board of Directors of the United States Steel Corporation, and many years after Mr. Corey became a member of the Board of Directors.

MR. LINDABURY: The way you have it, it would indicate they held dual positions. I think perhaps that was not what either of you meant.

MR. DICKINSON: I think at some time they did.

By MR. DICKINSON:

Q. Was not Mr. Corey president of the Carnegie Company and a director, also, of the United States Steel Corporation?

A. No.

Q. He was not?

A. No.

MR. DICKINSON: Do you want to correct that?

MR. LINDABURY: I think that had better be made clear. So far as I recollect, nobody held office in both companies at the same time.

THE WITNESS: That is true.

MR. DICKINSON: He made that statement himself.

MR. LINDABURY: Perhaps so.

MR. DICKINSON: Let us see how it reads.

(By request, the stenographer repeated the following questions and answers:)

"Q. A number of those men who had been with the Carnegie as officers or directors and who exchanged their securities became officers or directors of the United States Steel Corporation, or continued as officers or directors of the Carnegie, did they not?

"Mr. Lindabury: One or the other?

"The Witness: Yes; one or the other.

"By Mr. Dickinson:

"Q. And in some instances both, did they not?

"A. Yes; in two instances. That is, by two instances I do not mean all three, but I mean Mr. Schwab and Mr. Gayley became officers, and Mr. Schwab a director in the United States Steel Corporation and——"

THE WITNESS: None of them occupied official positions in the United States Steel Corporation and the subsidiary company at the same time.

By MR. DICKINSON:

Q. They did not at the same time?

A. No.

Q. Your answer to that would be the same as that which you made as to the National Steel and the American Tin Plate, would it not?

A. Yes.

Q. And the American Sheet Steel?

A. Yes.

Q. Your answer would be the same?

A. Yes.

Q. Now, coming to the American Bridge; at the time that was taken over, did not the stockholders of the American Bridge become stockholders of the United States Steel Corporation?

A. By exchange, yes.

Q. Did any of those who had been with the American Bridge Company continue thereafter with the American Bridge Company as officers or directors?

A. I think not. Mr. Roberts was president of the American Bridge Company and he became a director of the United States Steel Corporation, but he did not continue his relationship with the American Bridge Company. He may have continued——

Q. (Interposing) Mr. Charles Steele was a director in the American Bridge Company, was he not?

A. Mr. Charles Steele?

Q. Of Morgan & Company?

A. Yes; he was on the board of directors of the American

Bridge Company and continued there for a short time; I am not sure how long.

Q. And he was a director of the United States Steel Corporation?

A. Yes.

Q. Take the Lake Superior Consolidated Iron Mines; that was the property you got from the Rockefellers?

A. Yes.

Q. That was done by an exchange of stock, was it not?

A. Yes, largely.

Q. Of the United States Steel Corporation?

A. Yes.

Q. Two of the Rockefellers became directors of the United States Steel Corporation, did they not?

A. Yes. I do not think they held any position with the other companies, but I am not certain.

MR. LINDABURY: They only remained a very short time.

THE WITNESS: Yes; Mr. Rockefeller, Senior, never attended a meeting of the board of directors of the United States Steel Corporation, and soon after resigned.

MR. DICKINSON: Have you the tariff hearings, Mr. Lindabury?

MR. LINDABURY: Yes. Unfortunately, however, you have a different edition from mine.

MR. DICKINSON: I have the official one.

MR. LINDABURY: So have I. "Government Printing Office." But I understand there were two different editions and they are differently paged; they are both official.

MR. DICKINSON: Turn to page 5520——

MR. LINDABURY: Mine is seventeen hundred and something. Who was the questioner?

MR. DICKINSON: Mr. Cockran.

MR. LINDABURY: You ask the question and I will try to find it.

By MR. DICKINSON:

Q. Page 5519, here in my copy. I will read the following:

"Mr. Cockran: Now, Judge Gary, this common stock which was issued for property was issued at a very much lower

valuation than the preferred stock and bonds—I mean nobody estimated it was worth par?

"Mr. Gary: The market did not estimate it so.

"Mr. Cockran: The concensus of opinion of the men who took it under this distribution did not value it any higher than the market, which was about 10 cents on the dollar?

"Mr. Gary: Everyone will have to answer for himself on that.

"Mr. Cockran: I would like to get the theory of it.

"Mr. Gary: This was dominant in my mind, Mr. Cockran, and I was one of the participants, that shares of stock of the old companies, even though selling on the market at a price less than par, as applied to common stock at least, when they were put together, as they would be put together after acquired, would be worth at least par—at least the capital stock which was delivered in exchange for those old shares on the basis of par.

"Mr. Cockran: You mean the combination itself added to the value of each element that entered into it?

"Mr. Gary: Yes; I thought so. I believed that then, and I was just as certain of it as I am now as a result.

"Mr. Cockran: I believe in that implicitly. I think events have shown it. The United States Steel Company itself added nothing to the property of these various companies?

"Mr. Gary: No; except the figures $25,000,000 cash."

Mr. Lindabury: Except what?

Mr. Dickinson: "Except the figures $25,000,000 cash."

Mr. Lindabury: That does not agree with my edition.

Mr. Dickinson: What does yours say?

Mr. Lindabury: The word "figures" is not here. Mine reads: "Except $25,000,000 cash."

Mr. Dickinson: The sense would be the same.

Mr. Lindabury: Yes. I think we had better take it the way it is in my edition here, because this is a little better English.

By Mr. Dickinson:

Q. (Reading):

"Mr. Cockran: That was a kind of a guarantee that nobody would be hurt, was it not?

"Mr. Gary: No; the syndicate raised that and paid it in cash and turned it over to the Treasury of the United States Steel.

"Mr. Cockran: But they took stock?

"Mr. Gary: They took stock, yes, sir.

"Mr. Cockran: Outside of that there was not a single building or even a wheelbarrow contributed to the net property of the constituent companies?

"Mr. Gary: No, sir.

"Mr. Cockran: It was the same article as before?"

MR. LINDABURY: This says "it held exactly the same property as before." What is yours?

MR. DICKINSON: "It was the same article as before."

MR. LINDABURY: This sounds much more likely, "it held exactly the same property as before."

MR. DICKINSON: I will let it go down that way.

MR. LINDABURY: Because it is not very good sense as you have it.

MR. DICKINSON (Continuing reading):

"Mr. Gary: Yes, sir.

"Mr. Cockran: It secured the additional value by the fact of the combination and the additional strength which the Corporation gave it?

"Mr. Gary: Yes, sir.

MR. LINDABURY: "Which the Corporation gave it?"

MR. DICKINSON: That is the way it reads here.

MR. LINDABURY: It says "combination" here. How can we rely on either of these?

MR. DICKINSON: I will take yours. I think it means the same thing.

MR. LINDABURY: And if we ask the Judge whether he remembers this and he answers as I think I would have to, he would say no.

MR. DICKINSON: I do not know what he will say, but I do not think it is right for counsel on cross examination to intimate what he should say.

THE WITNESS: It would not influence me.

MR. LINDABURY: I would not have said it but for the knowledge——

MR. DICKINSON: If you did not know that the Judge would overrule you.

MR. LINDABURY: I would not do it with some witnesses, you know that.

MR. DICKINSON (Continuing reading):

"Mr. Gary: Yes, sir.

"Mr. Cockran: The common stock to a certain extent was issued against this future value which the company would have by reason of the combination?

"Mr. Gary: It was all a part of the same transaction.

"Mr. Cockran. I suppose it was also a capitalization to some extent of the skill with which the company would be managed, its business management and ability?

"Mr. Gary: Really, the increase in the total capitalization to which you refer applies to the securities of the old companies on the basis of their being put together under one management. Then the new stock of the United States Steel was issued against those old securities, and that increased the valuation.

"Mr. Cockran: Could you give us about what that was valued at? Judging even by the market values—it was about $400,000,000, was it not—that is to say before they went into the company—

"Mr. Gary (interrupting): That is, you mean to say——

"Mr. Cockran (interrupting): I mean to say these companies before they went into the combination were worth, as a matter of fact, $400,000,000?

"Mr. Gary: I presume you are right. I presume the selling value of the old securities was $400,000,000, less than the total amount of all the new securities—stock and bonds. I presume that is so."

MR. LINDABURY: There is something very material left out there.

MR. DICKINSON: Is there something in yours?

MR. LINDABURY: Yes. This is Judge Gary's answer:

"I should say very much more than that."

MR. DICKINSON: Read his whole answer.

MR. LINDABURY: "I presume the selling value of the old securities was $400,000,000, less——"

MR. DICKINSON: Isn't there something before that?

MR. LINDABURY: (Reading):

"Mr. Gary: I should say very much more than that. I presume the selling value of the old securities was $400,000,000, less than the total amount of all the new securities—stock and bonds. I presume that is so."

MR. DICKINSON: (Continuing reading):

"Mr. Cockran: I think it was a good deal more than that on paper value, but I mean what was the actual value? Could you give us about what it was? Think what the stock of the new company sold at immediately after organization, and what the aggregate of the constituent companies' sold at, not immediately before, because they appreciated very much under prospect, but before the company started."

MR. LINDABURY: Are you going to ask this witness to affirm this record?

MR. DICKINSON: Not the verbal quibbles, I am not.

MR. DICKINSON: (Continuing reading):

"Mr. Gary: I cannot answer that, because there was included in these properties the Carnegie property, which did not have any common stock."

Now, Judge Gary, leaving out the little differences of print here——

MR. LINDABURY: Do you think you ought to stop just there?

MR. DICKINSON: I will go on. Do you want me to go to the end of the page?

MR. LINDABURY: At least to the next, I think.

MR. DICKINSON: (Continuing reading):

"Mr. Cockran: Oh, yes; they did.

"Mr. Gary: They had bonds and stock, but there was no market value for them. They were not on the market at all. They were worth, intrinsically, at that time, very much more than the par value, I think."

Judge, that testimony that has been read to you, did you give that testimony?

A. I have not the slightest recollection in regard to it. Perhaps if you will ask me a question with reference to a

particular fact you are interested in I can testify to what you wish to develop.

Q. You say you have no recollection of this. Haven't you read it over?

A. I remember very well the incident. No, I have not read this. If I have read it, even then I do not remember it.

Q. It is on the very next page to what you stated a while ago you did read.

A. I presume I did read it, but it did not attract my attention. Can you cover the point by a question?

Q. The question is for you please to look it over and state whether or not you gave that testimony.

MR. LINDABURY: Which version will you have him use?

MR. COLTON: Both of them.

THE WITNESS: This is not what you have been reading.

MR. DICKINSON: I will take your copy, then.

MR. LINDABURY: I can give you, Judge, what is correct. Where did you begin?

MR. DICKINSON: The first question is: "Now, Judge Gary, this common stock," and I read along down to "I cannot answer that question."

MR. COLTON: Yours is the revised edition of this, just the same as the stenographer revises his first print.

MR. SEVERANCE: I think the record ought to show that there are two editions of this.

MR. LINDABURY: These corrections are the stenographer's corrections, probably.

MR. DICKINSON: Nobody knows whose they are.

THE WITNESS: I am not willing to admit that I testified to that exactly in that language.

By MR. DICKINSON:

Q. State in what respect, if any, that incorrectly reports you?

A. I do not think I said "that the combination itself added to the value," and I believe that is shown by other things that I said at the same time.

Q. What question and answer did you refer to; please quote them both, so that we will understand?

A. The question of Mr. Cockran was "You mean the combination itself added to the value of each element that entered into it?

"A. Yes, I thought so. I believed that then, and I was just as certain of it as I am now, as a result."

I do not think that was Mr. Cockran's question.

Q. What do you think the question was?

A. It is pretty hard to guess at that unless you turn over the page and look at an answer of mine, as follows:

"Really, the increase in the total capitalization to which you refer applies to the securities of the old companies on the basis of their being put together under one management. Then the new stock of the United States Steel was issued against those old securities, and that increased the valuation."

I have no doubt that was the answer I made. Not that it was complete; it is not complete. Of course, it did not then state what I meant to state, but I presume I said that.

Q. Do you think his question was different from what is put here?

A. I think it was.

Q. Have you any recollection of what it was?

A. No; as I have already said, I do not remember this testimony at all.

Q. Are there any other changes that occur to you?

A. The question by Mr. Cockran: "I believe in that implicitly. I think events have shown it. The United States Steel Company itself added nothing to the property of these various companies?

"A. No, except $25,000,000 in cash."

I do not think I made that answer or could have made that answer.

Q. That was what was added, was it not, in cash?

A. Yes, it was added in cash, but the taking together the properties, putting them together as a going concern, I think very materially added to the value of the properties.

Q. The question was: "The United States Steel Corporation itself added nothing to the property of these various

companies," you understand that to mean it added nothing tangible?

A. It depends, of course, upon how that is construed.

Q. Construe it as tangible. Would the answer be correct?

A. Yes.

Q. Then construing it—in what other way, then, could it be construed?

A. Well, this question of Mr. Cockran's it seems to me implies that nothing of any value was added to the properties of the various companies.

Q. In the way of additional property or money?

A. Yes, but he does not say that.

Q. That is evidently the way you took it.

A. He does in another question, where he asks if a single building or even a wheelbarrow was contributed to the net property of the constituent companies; he does confine his question to tangible properties, but in this question as it reads he does not seem to.

Q. Assuming the other construction, that it may have meant intangible as well as tangible, what did it add, except the $25,000,000?

A. I think the ownership of the United States Steel Corporation of all these properties, so that it could utilize them fully as a going concern for the best results added very materially to the values of the respective properties under different ownerships.

Q. That is to say, they were worth more because they were owned by the United States Steel Corporation?

A. Yes, I think they were.

Q. With those changes suggested, is there anything else in this testimony that you do not assent to as having given?

A. As I have said, I do not remember. I would not think there is anything in that testimony, as I have attempted to change it and as I understand it materially different from the facts. I could give them all to you more explicitly, perhaps, and make the whole thing plainer. This whole examination did not relate to any question that was under investigation at

that time, of course. It was an effort of Mr. Cockran to draw out something that he was particularly interested in.

Q. You gave this testimony?

A. Oh, yes.

Q. And, of course, gave it under oath?

MR. LINDABURY: He gave testimony.

MR. DICKINSON: Yes. I will strike out "this."

THE WITNESS: I did not intend to misrepresent the facts, of course.

By MR. DICKINSON:

Q. Whatever you gave you gave at the time according to your knowledge and understanding and belief, of course?

A. Oh, yes.

Q. Do you undertake to say now, Judge, of your own knowledge, that you remember distinctly that this is an incorrect record?

A. No.

Q. You do not say that?

A. No, because I do not know anything about it.

Q. So far as you recollect, with the changes which you have suggested, did you give the testimony as recorded there?

MR. LINDABURY: I object. The Judge has already said he has no recollection on the subject. That is a question that is framed, I think, to make the answer——

THE WITNESS: Of course I cannot force myself to remember that, Judge.

By MR. DICKINSON:

Q. You do not remember anything that you said there?

A. No. If you will inquire of me as to any specific fact or anything that was in my mind then or at any other time, if I can remember it, I will tell you. When I say I do not remember about that testimony, that would not impress itself on my mind, because it was not under investigation; it was not in question; it was not the subject-matter. I had no figures with me there except those that related to the inquiry about which I was called to testify. Mr. Cockran gave me certain figures as to market values, and so forth. I did not have any

of those figures before me. I had no recollection then about them, and I accepted his statement in regard to them, assuming, for the purpose of his investigation, that he was correctly quoting them.

By Mr. Dickinson:

Q. In volume 65, page 8815, of the typewritten record, the following questions and answers appear:

"Q. Judge, there were other steel companies in business at the time the United States Steel Corporation was formed that were not taken over, were there not?

"A. There were a good many.

"Q. Will you give the names of the principal ones that occur to you?

"A. I can give the names of some of them; Jones & Laughlin, Lackawanna Steel, the Republic Iron & Steel, Cambria Steel, Pennsylvania Steel, the Maryland Steel, the Bethlehem Steel. I think the Inland Steel was started. That has grown to be a big company since; the Ashland Steel," and afterwards the Colorado Fuel & Iron was added.

By Mr. Dickinson:

Q. At the time the United States Steel Corporation was formed, is it not a fact that the subsidiary companies of the United States Steel Corporation at that time had the capacity to produce much more than twice the tonnage of steel ingots of all of these companies combined?

A. I cannot answer that.

Q. Have you any idea?

A. No, I do not remember.

Q. Can you give any approximation as to the capacity of either one of those companies in steel ingots in the year 1901?

A. No, I cannot. Of course they had a very large producing capacity of ingots for their own conversion into other products.

Q. Do you know what the percentage of the steel capacity of the United States Steel Corporation in ingots then was of the entire capacity of all the makers in the United States?

A. No, I do not; I haven't the figures in my mind. I have

not looked them up or had any occasion to refresh my recollection.

Q. Do you know what the capitalization of each or any of these companies was at that time?

A. I do not. I am sure the capitalization did not represent anything like the values of the property.

Q. Do you know approximately what the capitalization then of Jones & Laughlin was?

A. No.

Q. Do you know approximately what the capacity then of Jones & Laughlin was in Bessemer ingots, open hearth ingots, rolled products, including wire rods, or either or any of them?

A. No, I don't remember.

Q. You have no recollection?

A. No.

Q. How did Jones & Laughlin at that time compare in size with the National Steel Company?

A. I cannot answer that because I don't remember the figures. In real strength I would consider them very much stronger.

Q. What do you mean by real strength; do you mean the size of the plant?

A. No, not that alone. I mean in being thoroughly established in business, in having a good organization, in having finely equipped mills, in having raw materials well located, in opportunity to manufacture at low cost, and to make the greatest success as to total net results of business for a year.

Q. Do you know the number of furnaces they had at that time?

A. I have answered that question.

Q. In the negative?

A. In the negative.

Q. Do you know where their ore properties were, what they consisted of, and what was the estimated amount?

A. No, they did not have so much ore then. They were getting into the ore business and were continuing that. They could get in; they had facilities for getting in; they had great credit; Jones & Laughlin had splendid credit; they could borrow, as they did afterwards, large sums, many millions.

and they were a strong, vigorous company. If the United States Steel Corporation had been desirous of securing a monopoly of the iron and steel business that is the company that we would have taken over, when we were organized.

Q. You do not know the capitalization of it?

A. No.

Q. In ingot production did it produce as much as one-fourth of what the Carnegie produced at that time?

A. I am sorry to say that I cannot give you the figures in regard to their capacity.

Q. And you cannot give their comparative productive capacity in comparison with the National or the Illinois?

A. I cannot at this time, I am sorry to say. I knew the company in a general way for a great many years.

Q. How about the Lackawanna Iron & Steel Company. Do you know the capacity of their plant?

A. No, I do not remember those figures at all.

Q. Do you know what iron ore properties they owned at that time and where they were?

A. I knew something about them.

Q. Where were they located?

A. They had a lot of good ore on the Mesabi Range.

Q. What was the estimated tonnage, do you know ?

A. No, I do not. And I think they had other ores. They had some Pennnsylvania ores, very good, peculiarly good quality, because it was so low in phosphorus.

Q. Do you know anything about the tonnage?

A. No, I do not.

Q. Do you know about what the capitalization of that was, or the capacity?

A. I did, but I do not remember now.

Q. Take the Republic Iron & Steel Company, did they have ore properties?

A. I do not think they had so much then; they have an abundance of it now. I knew they had some, Judge.

Q. I am speaking as of that time.

A. They had a good deal at that time.

Q. Where was that located?

A. I know they had some on the Mesabi Range.

Q. Do you know what the estimated tonnage was?

A. No, I do not.

Q. Do you know whether they had any old range ores?

A. I do not remember.

Q. Do you know what their capacity in ingots or rolled products was as compared with the Carnegie or the National or the Illinois?

A. No, I do not think at that time the Republic Iron & Steel Company would have been considered a strong manufacturing concern as compared with Jones & Laughlin, for instance. It is strong now, very strong.

Q. I am confining my question to that time.

A. To that period when the Steel Corporation was formed?

Q. Yes. Take the Cambria Steel Company. Do you know whether they had any ore properties then?

A. They had.

Q. Where?

A. On the Mesabi range. They had a half interest in the Mahoning, a very large quantity, and they had others, I have forgotten just where.

Q. Do you know what their capacity in Bessemer ingots was?

A. I do not remember now.

Q. Nor the comparative capacity in relation to the National Steel?

A. No.

Q. Or the Federal Steel?

A. No.

Q. Or the Carnegie?

A. No, it was a big concern located at Johnstown, very prosperous at that time.

Q. You say the Cambria was located at Johnstown?

A. Johnstown, Pennsylvania.

Q. The Inland Steel Company, at the time the Corporation was formed, do you know what its ingot production was?

A. If it had been formed then it was a small concern, getting started, but it has grown into a big concern.

Q. It was not one of your principal competitors at that time?

A. No, I think at that time it was a pretty vigorous baby and had entered into competition in the Chicago District, but I might be mistaken as to the exact date. That is why I am a little uncertain; I do not remember just when it was formed, but I remember early in its existence it was very vigorous. That is as far as I can go and be certain I am accurate.

Q. Was the Colorado Fuel & Iron a competitor of yours?

A. Not to much extent.

Q. At that time was it a strong concern?

A. Well, I would not consider it a strong concern, as compared with some others. It was a good company. It had an abundance of very fine coal. It had a good location for certain territory, and it had some very good ore. Its opportunities were great.

Q. Do you know whether or not the capitalization of all of those concerns that you named, combined, amounted to one-third of the capitalization of the United States Steel Corporation?

A. I don't know; and that would not influence me very much if I did. I remember very well the Carnegie Company; they had a capital in the fall of 1897, the winter of 1897-1898, of $25,000,000, and their properties were actually worth probably more than $300,000,000 at that time.

Q. When was that?

A. In the fall and winter of 1897.

Mr. Dickinson: I offer in evidence from the Directory of the Iron and Steel Works of the United States for 1901 the following:

On page 106, beginning with the heading "Jones & Laughlins, Limited" to and including the words "which operates extensive limestone quarries near Hollidaysburg, Pa.," on page 109.

On page 86, beginning with the heading "The Lackawanna Iron and Steel Company," to and including the words "where it will be coked for the use of its blast furnaces," near the bottom of page 88.

On page 69, beginning with the heading "REPUBLIC IRON AND STEEL COMPANY," to and including the words "at the Pioneer Furnaces, at Thomas, Alabama," at the bottom of page 77.

On page 103, beginning with the heading "CAMBRIA STEEL COMPANY," to and including the words "Naginey Quarry Company, Limited, both operating extensive limestone quarries in Pennsylvania," near top of page 106.

On page 100, beginning with the heading "THE PENNSYLVANIA STEEL COMPANY," to and including the words "limestone quarry near Steelton, Pennsylvania," in the middle of page 102.

On page 102, beginning with the heading "MARYLAND STEEL COMPANY," to and including the words "Otto-Hoffman type, with a daily capacity of 1,000 tons," near bottom of page 103.

On page 81, beginning with the heading "BETHLEHEM STEEL COMPANY," to and including the whole of page 83.

On page 278, the paragraph beginning with the words "Inland Steel Company," and ending with words "R. J. Beatty, General Manager.—See Rolling Mills and Steel Works in Illinois."

On page 284, the first paragraph on said page, beginning with words "Inland Steel Company" and ending with words "See Rolling Mills and Steel Works in Indiana."

On page 241, at bottom of page, paragraph beginning with words "Ashland Steel Company, Incorporated" and ending on page 242 with words "L. R. Putnam, Treasurer."

On page 122, beginning with the heading "THE COLORADO FUEL AND IRON COMPANY," to and including the whole of page 125.

(The extracts referred to were thereupon marked "Government Exhibit (Gary) No. 432-a, June 12, 1913," and will be found in the volume of exhibits.)

(Thereupon a recess was taken until 2 o'clock p. m.)

AFTER RECESS.

ELBERT H. GARY,

the witness under examination at the taking of recess, resumed the stand for further examination.

CROSS-EXAMINATION (Continued).

By Mr. Dickinson:

Q. Judge, you stated in your direct testimony that in 1896, if you were not mistaken, the Illinois Company came very near going into the hands of a receiver.

A. If I was not mistaken as to the date.

Q. I was going to ask you if that was not in 1897?

A. I should not be at all surprised.

Q. The rail war began in February, 1897, and it was after that?

A. I do not connect the two.

Q. It was after that, was it not?

A. I think it was in 1897.

Q. In the latter part or the first part?

A. I don't remember.

Q. You do know that there was a very sharp break before that in the matter of selling rails between the Illinois and the Carnegie?

A. I think so.

Q. Was that competition in anything else besides rails?

A. I do not know. I did not know very much about the business at that time.

Q. Judge, you said this morning that when the Corporation was formed, the American Steel & Wire Company did 64 per cent. of the wire business. I understand that you have since expressed a desire to correct that so as to make it 64 per cent. of the wire nail business?

A. Yes. I do not remember the other.

Q. What was the wire nail business done by the American Steel & Wire Company in 1902; what percentage?

A. I do not remember.

Q. From the time it was formed up to the time it was taken

over by the Corporation, what percentage was it doing of the wire business?

A. I do not remember, if I knew.

Q. Where do you get this 64 per cent? Do you know what the various subsidiaries of the American Steel & Wire Company were doing at that time, and what all their competitors were doing, or is that secondary information derived from other sources?

A. It depends upon what you term secondary.

Q. I mean to say: Did you have, as of that time, access to sources of information which at that time resulted in giving you this information, or is it something that you have looked up recently?

A. At the time I testified before one of the Congressional committees I looked into the question of figures pretty carefully; got figures from the books and reports and publications, and talked with various people about it, and my information, or what I would call my knowledge, because received in the ordinary course of business by consultations with our own people and other people in the line, was verified and sustained by these figures.

Q. When did you look that up?

A. I looked it up particularly, I know, when I testified before the Stanley Committee, and I have since to some extent.

Q. Then you did not look it up until 1911?

A. Oh, yes; I had kept track of it from time to time more or less. I was pretty closely informed all the time as to what our relative percentages were.

Q. Did you know what percentage the competitors of the American Steel & Wire Company were doing in the year 1901 or the year 1900? Can you give any percentages?

A. I cannot recollect now, but I did know from time to time pretty accurately.

Q. This figure, 64 per cent., is not that based upon the examination of books and statistics, partly or wholly?

A. Partly, yes; partly. That is, I used those figures to refresh my recollection with reference to what I had learned in my business connections.

Q. Did you have any recollection independent of these figures?

A. As to exact figures?

Q. Well, as to the figures which would give a basis resulting in 64 per cent?

A. I did have some; but it is only fair, Judge, to say that I might not have in my mind and in my recollection figures. But if I had those figures presented to me in any book or by any one, I could tell whether they were substantially correct, from my knowledge and information.

Q. But, for instance, you have no figures in your mind—I mean no data in your mind, showing all of the competitors of the American Steel & Wire Company at that time, have you?

A. You mean separately or altogether?

Q. Separately.

A. Well, I did.

Q. In your mind, independent of these figures?

A. Oh, no; no, not if I understand you. The figures I have in mind were the relative percentages of the Steel Corporation and all others.

Q. Well, now, who made those figures?

A. From time to time?

Q. The figures upon which you base this conclusion; were they made up in the comptroller's office?

A. There were figures made in the comptroller's office from time to time. I inquired from time to time when we were considering questions of appropriations or extensions of our works at times, I always inquired into percentages.

Q. Would that show the amount of percentages in the various kinds of articles produced by the various competitors of the American Steel & Wire Company in those several kinds in which they competed?

A. Well, more or less.

Q. Can you give any data independent of these figures which were furnished in the comptroller's office?

A. I can give figures, yes. I can give some figures.

Q. State what competitors of the American Steel & Wire Company you took into consideration when you gave this percentage of 64 per cent. in wire nails.

A. All of the competitors.

Q. Name them, will you?

A. I can't do that.

Q. Can you name any of them?

A. Of course I can give you some of the names.

Q. Well, in 1901; name those who in wire nails were competitors of the American Steel & Wire Company of New Jersey.

A. Take the Chicago Tack Company, for instance, as an illustration, at Grand Crossing; that was a substantial competitor, and has been always.

Q. In nails?

A. Yes.

Q. Can you give the amount of output?

A. No, I cannot.

Q. You do not know what percentage you allowed them in that estimate?

A. No.

Q. What other can you name, in 1901?

A. The Ashland was one.

Q. What percentage did you allow them?

A. I cannot remember.

Q. Can you remember what percentage you assigned to them?

A. No, I cannot. I don't remember the names of the companies, any of them.

Q. Can you give the production in nails in 1901 of any of the various works of the American Steel & Wire Company?

A. No.

Q. Is not this largely based upon statistical sources and publications that you accepted, and not upon information and knowledge which you had yourself?

A. I should say it is.

MR. DICKINSON: Then we except to that as incompetent, irrelevant and hearsay, and also except to it because I do not think that the answer was responsive to the question I asked. I think it was volunteered; but the context will show that. At any rate, I enter the exception.

By MR. DICKINSON:

Q. Was there any time from 1894 to 1901 when there was normal competition in rails between the Illinois Company and the Carnegie Company, except the times when there was no pooling agreement between those two companies?

A. I cannot answer the question.

Q. Was there any time from 1894 to 1901 when there was not severe competition between those two companies in rails, except when a pooling agreement existed between them?

A. The same answer.

Q. What do you mean by normal competition?

A. Did I use the expression?

Q. The question was asked you at page 8820, of Volume 65 of the typewritten testimony, as follows:

"So what you would call the normal competition between them on rails was not very great.

"A. That is true."

Then there is some more of the answer which I will read if you want it.

MR. LINDABURY: Do not answer, Judge, please. I think you ought to read the preceding.

MR. DICKINSON: I will.

MR. LINDABURY: I used the word "normal," and in order that he may rightly comprehend your question you ought to read what just precedes it.

MR. DICKINSON: Read how far?

MR. LINDABURY: So as to give the connection.

MR. DICKINSON: Where do you want me to begin:

MR. LINDABURY: The testimony of his which was in a way summed up in my question beginning, "So that," what page is that?

MR. DICKINSON: Volume 65, and I was asking in regard to page 8820. I will begin reading wherever you say.

THE WITNESS: I was talking of natural, usual and fair competition. I am sure.

MR. DICKINSON: Do you want me to read back in view of his answer?

MR. LINDABURY: Just what is on that page.

By Mr. DICKINSON:

Q. On that page, Judge Gary, preceding that question I just read you is part of an answer made by you to the previous question, as follows:

"Now, the Illinois Steel could retaliate, but I do not think that kind of competition is such competition as I ought to consider in answering the previous question. These respective companies had a natural territory, and so far as the bulk of their products was concerned, they were not in competition. I cannot conscientiously say that there was no competition between these companies. There was some, but that kind of competition was incidental to the general business purpose and manufacturing idea of the different companies."

That is the way it reads. After reading that do you give the same answer you gave a while ago?

A. Yes.

Q. Judge, is there normal competition between parties to a pool while the pool is in existence?

A. It depends upon what you mean by "pool" perhaps.

Q. Well, take such pools as existed between the Illinois and the Carnegie companies in respect of rails between November 18, 1898 and 1901.

A. That would not affect the total output, the total volume of business, at all. I reached the conclusion after some time that possibly it might under some circumstances be considered as influencing prices, however remotely, and it was for that reason that it was abandoned.

Q. Didn't it influence prices?

A. I do not know that it did; I hardly think it did, Judge, because the prices went up in 1899 to $33, and afterwards went down to $28.

Q. When?

A. I should think in 1901, but in 1900, a very dull year, I believe they went down to $26. I think if the United States Steel Corporation had had the disposition of a good many manufacturers the fact that tonnage was divided might have had a tendency to increase or maintain high prices, although it did not have that effect because we did not believe in high prices.

Q. I am not asking you about the United States Steel Corporation for a period after it was formed, but for the period of time when pools existed between the Illinois and the Carnegie. Didn't those pools follow a period of severe competition when prices were low?

A. I cannot answer that because I do not know anything about it, and never did.

Q. Don't you know whether or not those pools affected the prices of rails?

A. I don't know anything about those pools; I never did. I have no knowledge about it. I do not know, and did not know anything about the market in those days.

Q. What do you know about the normal competition?

A. I know in 1897 there was a very bitter competition, what I would consider a destructive competition, and that the Illinois Steel Company was about to go into bankruptcy.

Q. Would you call that normal?

A. No. I don't know anything about pools in connection with that, before or after. I did not have anything to do with them. I had no information in regard to them.

Q. The question that I asked you, then, was if there were pools formed after competition and if prices were raised, would you call the relations between those companies which were parties to the pools as being one of normal competition?

A. I cannot answer that question, Judge, in that way.

Q. All right. Judge, what percentage of the Illinois Steel Company's trade was sold west of the Indiana and Ohio lines in the year 1899?

A. I cannot answer that. I think it was very large.

Q. Can you approximate it?

A. No.

Q. What proportion of its trade was in the south, meaning by south, south of the Ohio River and east of the Mississippi River?

A. I do not remember that now.

Q. What proportion of its trade was west of the Mississippi River in the year 1899 or the year 1900?

A. I do not remember. If I have had those figures divided, I do not remember them. I should say its trade largely

was east of the Mississippi River and west of a point 100 miles east of Chicago and north of the Tennessee line.

Q. At the time that the Federal Company and the Carnegie Company were taken over by the United States Steel Corporation, can you give the percentages respectively of the trade of those companies in any of the territories that I have named?

A. I cannot.

Q. Can you approximate it?

A. No, I cannot remember.

Q. You spoke of competition between the Carnegie Company and the Federal Company, and in that connection of water navigation being opened, thereby enabling the Carnegie to sell some products to the Northwest. Now, what periods would this navigation be open, enabling them to reach markets that they could reach at that time by water navigation?

A. I think about the middle of May on the average, say until about the middle of October.

Q. During that period and in that way, what markets could they reach and compete in successfully with the Federal Company?

A. The northwestern markets, to a limited tonnage. I do not say they could compete successfully with the Illinois Steel. I do not know about that.

Q. I will change that question, then, Judge, and ask you in what markets could they sell commodities reached by water navigation during the period you stated, and meet the prices to the extent that they did sell, of the Federal Company?

A. I would say the Lake Superior markets.

Q. The Lake Superior?

A. Yes.

Q. Well, how about Detroit?

A. Yes, they could meet the Illinois Steel in Detroit, I should say, during that time, very easily.

Q. How about points on Lake Michigan? Could they reach that by this water route?

A. On even terms? I do not think so.

Q. You mean to say on even terms as to Lake Michigan the rate as between——

A. (Interposing) Chicago is on Lake Michigan. Carnegie,

during that period, could not deliver their products at Chicago at as low a price as the Illinois Steel Company, assuming the Illinois Steel Company could manufacture at the same costs.

Q. Could it at that time manufacture at the same costs?

A. No; I do not think it could.

Q. Judge, do you know that the Carnegie Company had a girder rail mill and was paid to stay out of the girder rail business by other girder rail manufacturers at any time?

A. No; I do not, except I happened to be in court when the minutes referring to that subject were read.

MR. LINDABURY: When they were read to Mr. Schwab?

THE WITNESS: Yes.

By MR. DICKINSON:

Q. The Lorain made girder rails at that time, did it not?

A. Yes.

Q. If the Carnegie had been making girder rails and selling them in the market, it would have been in competition with the Lorain, would it not?

A. I think so. It depends upon circumstances as to what kind of competition it was. I do not believe they were very well prepared to make girder rails.

Q. Judge, do you know about a company that was proposed to be formed, called the Empire Rail Company?

A. Yes.

Q. What rail companies had agreed to go into that?

A. I cannot answer that definitely, but most, if not all, of them.

Q. The papers were drawn, were they not, and ready to be executed?

A. Yes.

Q. And really had been assented to?

A. Yes; by some of the manufacturers.

Q. And the Federal, among the others?

A. I don't know whether it had or not. It would have signed.

Q. But for the Carnegie's declining?

A. But for the Carnegie's refusal.

Q. But the Federal had agreed to sign it?

A. Yes; or its subsidary company.

Q. And that contemplated bringing in all of the rail makers of the United States, did it not?

A. I should think so; bringing them in as stated in the papers.

Q. You saw the agreement, did you?

A. I have no doubt I did.

Q. Yes. In that agreement, Government Exhibits, Volume III, page 1158, is the following:

"The agreement by the Carnegie Steel Company, Limited, that during five years it will not make any girder rails, and that it will not, during five years, make for or sell to any customer other than the Empire Rail Company steel rails weighing fifty pounds per yard or upward for use on the North American continent, restricting its production of rails other than for export to the 29½ per cent. of the total sales of rails for use in North America to be allotted by the Empire Rail Company."

Do you remember that provision?

A. I do not remember it, Judge. I was not the lawyer in the case, of course, nor was the Federal Steel an operating company.

Q. But you were president of the Federal Steel, were you not?

A. I was president of the Federal Steel and that owned the Illinois Steel, and the Illinois Steel would have been a party to this, and I knew of the transaction. The papers were drawn by some New York lawyers.

Q. And the Lorain was making girder rails at that time?

A. Yes.

Q. This would have affected the Lorain, would it not, this clause as to the Carnegie staying out of the making of girder rails?

A. Yes, assuming the Carnegie would have been in the girder rail business under any circumstances.

Q. They could have gone into it, could they not, with their capital and machinery and facilities?

A. I think they had uses for all their capital at that time, and were very heavy borrowers.

Q. If they could have gotten money, then they could have done it, could they not?

A. If they could have gotten the money they could have built a girder rail mill.

Q. Was it not the strongest concern in the iron and steel business in the United States at that time?

A. It was less weak than most of the others, financially.

Q. Do you know the ground upon which Mr. Carnegie objected to going into the Empire Rail Company arrangement?

A. No, I do not actually know.

Q. I will see if this carries your mind back to that time, and see if it refreshes your recollection. I refer to the minutes of the Carnegie Company, Limited, Volume III, page 1157, meeting of November 14, 1898:

"MM. Andrew Carnegie and Henry Phipps, Jr., together with a minority of the Board, were of the opinion that the objectionable features in the plan proposed more than counterbalanced the probable financial gain, the items especially disapproved being:

"The organization, under the laws of New Jersey, of a corporation which would conduct all the buying and selling of rails during five years. The by-laws of this corporation being recorded in New Jersey, they would be open to the public. It would be a 'trust,' and, as such, would be attacked under the various state laws prohibiting trusts and discussed by the news and trade papers. Much odium would attach to the members of this corporation, and, if the price of rails were advanced, the almost universal enmity of the railroads, purchasers of rails, would be incurred."

Do you recollect that being the attitude of Mr. Carnegie?

Mr. Lindabury: I object to reading from the minutes of some company a statement of some other person, either for the purpose of asking this witness if he endorses it or for the purpose of refreshing his recollection.

Mr. Dickinson: Well, the witness has said that his company had agreed to sign the contract, but they did not sign it on account of the attitude of Mr. Carnegie, and I am asking

whether he understood that to be the attitude at that time.

MR. LINDABURY: I quite object to it for the reasons I have already given. I do not object to asking the witness what he understood Mr. Carnegie's attitude was, but I object to reading from a paper like that and asking him to confirm it.

THE WITNESS: I did not hear the reasons given at that time. Mr. Carnegie knew his reasons better than any one else and if he gave those as his reasons, let us assume that he stated his real opinion.

By MR. DICKINSON:

Q. But you do not undertake to say that you know those were his reasons, as I understand it?

A. No, sir.

Q. It proceeds:

"The placing of the stock in a Voting Trust, to hold for five years, under which each Shareholding Company, regardless of the amount of stock held by it, would be entitled to but one vote, or one director, in the Empire Rail Company; the shares of stock of $100.00 each being allotted as follows:"

Then is set out the allotment, the Federal Steel being allotted 2950 shares and the Carnegie 2950 shares, the effect of that being to give the Cambria, Pennsylvania, Maryland and Colorado companies an equal vote in the government of the Empire Rail Company. Do you know whether that was assigned as one of the objections?

A. I never heard of it.

Q. Do you know that the Federal Steel was to have that proportionate share?

A. I don't remember.

Q. Here is a provision on the same page:

"The payment to the Maryland Steel Company of $200,000 per annum for five years, to the Pennsylvania Steel Company of $50,000 per annum during five years, and to a president of $50,000 per annum."

What do yon know as to those provisions, to pay the Maryland Steel and the Pennsylvania Steel the amounts named, and the reasons for making those payments?

MR. LINDABURY: I object to it. This is not an agreement.

These are remarks made by some individual not in the presence of this witness.

THE WITNESS: I do not know anything about that. I do remember something about the employment of a president at a salary.

By MR. DICKINSON:

Q. At the time of the formation of the corporation how much did the output or the capacity, either, of the Steel Hoop Company exceed the Carnegie in merchant bars, if it exceeded it?

A. I do not remember; I doubt if there are any statistics of the relative bar capacities in those days, but I may be mistaken.

Q. Can you give any estimate as to whether or not the American Steel Hoop Company exceeded, and if so how much it did exceed, the Carnegie Company in the output of merchant bars?

MR. LINDABURY: Judge Dickinson, is not the output of these companies already in evidence?

MR. DICKINSON: Judge Gary has given testimony in regard to it.

MR. LINDABURY: Will you answer my question?

MR. DICKINSON: I really do not recall whether it is or not, but I am answering in reference to that; I am answering in reference to Judge Gary's testimony.

MR. LINDABURY: Judge Gary has not given any testimony on that subject.

MR. DICKINSON: I may be mistaken, but I think he did.

THE WITNESS: I do not think I did as to bars. I might have given the present percentage. It is very small, 20 per cent, I believe, of the bar business, but I do not believe I gave any statistics for those years.

MR. DICKINSON: I never said percentages.

By MR. DICKINSON:

Q. Do you know whether or not the Steel Hoop Company did a small or considerable merchant bar business?

A. The Illinois Steel Company?

Q. No, the Steel Hoop Company.

A. I think it did have a considerable bar business.

Q. How about the Illinois Steel?

A. They had some bar business.

Q. How about the Carnegie?

A. They had some bar business.

Q. Will you give what I was trying to ask, the relative output of the Illinois and the Carnegie with reference to the Steel Hoop, in merchant bars?

A. No.

Q. Which exceeded, the Carnegie Company or the Steel Hoop Company, in merchant bars?

MR. LINDABURY: I object as already in evidence by statistics and not cross-examination.

THE WITNESS: I cannot answer it.

MR. DICKINSON: I think I will justify myself. Judge Gary said: "My impression is that the Carnegie Company did not have anything like as much as the Steel Hoop," referring to merchant bars, and it is perfectly legitimate for me to ask him now on that subject. It was brought out by his counsel on direct examination.

MR. LINDABURY: You confound me; I did not remember it.

THE WITNESS: Anyway, that would be my impression. That is as much as I can say about it.

MR. DICKINSON: I am sticking pretty close to the record here.

MR. LINDABURY: You happen to be right there now, but I will not agree that you have been there all the time.

MR. DICKINSON: I have been following this right along.

MR. LINDABURY: I think the triumphant way in which you uttered that shows the consciousness that it was a novel experience.

MR. DICKINSON: And I suppose you objected just on general principles.

Q. Judge Gary, I believe—I have not a reference just at hand—that Mr. Perkins testified about the balances carried by the Steel Corporation, reported about $75,000,000 in the various banks. Will you take a period from say 1901 down to the time of the bringing of this suit and please state what was the

amount of balances approximately, giving a maximum and minimum, within what you would feel——

MR. LINDABURY: I object to informing the witness as a part of the question, or preliminary to it, what testimony was given by another witness. I have always thought that was improper, and I remember many objections made by Judge Dickinson on that account.

MR. DICKINSON: I will follow your course and withdraw that question, and I will ask:

By MR. DICKINSON:

Q. I will ask you, without refreshing your memory, what balances in banks in the aggregate did the Steel Corporation usually carry?

A. Sometimes they were very much larger than they were at other times; at the present time——

Q. (Interposing) No, I am not asking you since the suit began.

A. At the time the bill was filed, October 26, 1911, I suppose we had a balance of about $65,000,000. It had been higher than that, and had been much lower than that.

Q. What would you give as the average of extremes each way throughout the period back?

A. From 1911 back to say 1905 I would estimate the balance to be equal to $60,000,000 at least on the average.

Q. And from 1901 to 1905?

A. I do not remember, but smaller than that. I remember we had at the time of the panic in 1907 about $75,000,000 in the bank.

Q. I believe you stated in your testimony that either the executive committee or the finance committee authorized a loan of $5,000,000 to Moore & Schley.

A. We had no executive committee then; it has been confused——

Q. The finance committee?

A. We had no executive committee.

Q. Well, I will strike that out. I believe you stated that the finance committee offered through Mr. Ledyard to lend five millions of dollars?

A. I have.

Q. To Moore & Schley?

A. Yes.

Q. You had the money to loan, it was a bona fide offer?

A. Oh, yes, we had about $75,000,000 cash in bank at that time, fortunately for the city of New York and the country generally.

Q. The question was asked you:

"Q. Do you know what the tendency or trend has been?" That referred to prices, and you said:

"Yes, I know."

Now, in the sense in which you answered that, Judge, I would like you to explain what you meant by the term "trend," whether it meant something, merely a change, something spasmodic or something that was constant. I just want to get what you meant really when you said yes. I want to know how to measure your answer.

A. Prices fluctuate, go up and down, more or less, sometimes more radically than at other times, but the tendency has been downward, just the same as the values of property in this country, the tendency has been upward. That does not mean constant, steady, unchangeable.

Q. The tendency or trend, as comparing periods of greater or less length of time, or comparing two remote points; I want to get at just what you mean by that; that is to say, do you mean to take 1901 and compare it with 1911 or 1912, or what did you have in mind when you stated that?

A. Yes, I would say commencing in 1901.

Q. And comparing that with what?

MR. LINDABURY: That was not it, Judge. I was conducting that examination. He was speaking of the whole period from 1901 down, and said the trend was as you stated. He was not comparing two extremes, but speaking of the whole period and the cost of things.

MR. DICKINSON: I am trying to get at what he meant.

By MR. DICKINSON:

Q. You said, on page 8869, as follows: "And I believe the tendency of our selling prices has been downward, and that

we are selling at the present time at less prices than we were when the Corporation was organized."

A. Yes.

Q. Then the question: "You know what the tendency or trend has been?

"A. Yes, I know.

"Q. And it has been as you state?

"A. It has been as I state."

What was the mental concept there, so far as contrasting anything in the use of the word "trend" by you?

A. Take the prices of 1901; I think the prices generally on the average have been lower since than they were at that time.

Q. When you say "since," what do you mean by "since"?

A. Up to the time the suit was commenced.

Q. You mean at the time the suit was commenced, or from 1901 on up to that time?

A. Yes, from 1901 on to—I would say from the middle of 1901 to the middle of 1911 I believe on the average prices have been lower since that time than they were at the beginning.

Q. Now, if I understand you, Judge, what you mean to say by that is this—if not, you can say so: That what you had in mind there was contrasting the prices in 1901 with the prices in 1911. Is that what you meant by that answer?

A. No.

Q. Then did you contrast the prices of 1901 with any intermediate years, and if so——

A. (Interposing) With the average of the prices after that time.

Q. With the average prices?

A. Down to the middle of 1911.

MR. LINDABURY: I think he has made that very plain already.

MR. DICKINSON: No; it is not to me.

THE WITNESS: Prices might be a little higher at some time during that period than they were in the middle of 1901, and at other times lower. But, on the average, they were lower. Then I would say the tendency is to decrease the selling price.

By Mr. Dickinson:

Q. That is to say, did you have in mind, in answering that that you would take the prices from 1901 down to 1911 and then take the average for that period, and that the average would show a lower price than in 1901?

A. Yes; that would be my recollection. If that is not so it would be because there happened to be in 1911, or at some particular period, some particular boom that put prices up.

Q. I am not asking you now about the fact, but I am just asking you if that was what you meant?

A. That is what I meant.

Q. When you answered the question?

A. That is what I meant.

Mr. Lindabury: He meant that a chart line would show a decline, Judge. That is the simple English of it, taking the period all together.

The Witness: As an average.

Mr. Dickinson: Do you mean by that that he meant that if you took a chart line for the whole period and took the average that that average as compared with 1901 would show a decline?

Mr. Lindabury: Yes.

Mr. Dickinson: That is what he meant?

Mr. Lindabury: The tendency of that line would be downwards. Sometimes up and sometimes down, but on the whole down.

By Mr. Dickinson:

Q. I do not understand that you meant that, Judge. I understood you meant to take the whole period, and then an average of the whole period, and then compare that average with 1901, and then it would show a lower price than 1901. Is that correct or not?

A. Yes.

Mr. Lindabury: You see, a chart line is not an average line at all.

Mr. Dickinson: I am trying to get at what the witness means.

The Witness: I have not intended to say that at any par-

ticular time prices were higher or lower. I have not pretended to say that it was regular. The prices went up and down and up and down; I meant to say that they went down more than they went up, in my opinion.

MR. LINDABURY: That is what he meant.

By MR. DICKINSON:

Q. You meant the general average, then, was lower?

A. I think the tendency of prices was downward; the tendency was to lower them, yes.

MR. LINDABURY: It is not a question of average at all.

MR. COLTON: He has said twice that it was a matter of average.

MR. LINDABURY: The Judge is confusing it, I think.

THE WITNESS: It depends on what you mean by the word average. I used it in the sense——

MR. LINDABURY: (Interposing) Of average direction?

By MR. DICKINSON:

Q. You see what Mr. Lindabury and I are trying to get, Judge. Can you not help us out and give an answer?

A. I could not help you out except in this way:——

Q. (Interposing) I am just simply trying to get what you meant there.

A. I have no doubt that I am more or less obtuse.

Q. No; I have not found it out yet.

A. I believe that as a total net result of our sales there has been a decrease in the selling price of our commodities on the average. Sometimes one commodity may be higher and others lower. Sometimes circumstances put prices down and sometimes up. The market controls those things to a large extent. We have made it certain, however, that prices were not allowed to increase above a fair price, or what we considered a fair price, notwithstanding our costs of production increased; we have kept them down, and I believe that, from the time we commenced, from the time we began getting statistics, prices have been, on the whole, more down than up. The figures are accessible and can be obtained.

Q. Have you made any figure on that?

A. I have not made any figure, but——

Q. (Interposing) That is just a general estimate of yours, then, is it?

A. Except as I have inquired from time to time and tried to keep watch of it, Judge, and I have been pretty well posted.

Q. How far, from your own examination upon data you have gotten out to sustain you, can you say that the tendency has been downward? How far is that an exact expression or one just of general impression?

A. I will not be any more specific than I am. I think some dollars per ton on the average there has been a decrease. I think those figures are all accessible, and you can show, to a demonstration.

Q. (Interposing) I am not speaking of those figures. Of course we will get them when they come.

MR. LINDABURY: We have that all charted, and——

By MR. DICKINSON:

Q. I am simply trying to get a statement as to how definite you intend to be on that, Judge.

A. That is a fair question, of course. I was not attempting to state the figures accurately, but I was attempting to state a disposition and intention, and my knowledge of the general results, as ascertained from time to time in due course of business, by making careful inquiry. You can see, from what I have testified in this case, that would be an important question for me to consider, and has been all these years.

Q. Well, now, did you take the period from the formation of the Corporation down to the filing of this bill, or in your estimate did you take from the time of the formation of the Corporation down to the present date, because I notice in your testimony, page 8869, you say:

"I believe the tendency of our selling prices has been downward, and that we are selling at the present time at less prices than we were when the Corporation was organized."

Now, what period did you embrace in that?

A. I was talking then about the time the bill was filed. I believe you were inquiring with reference to that period.

Q. No, I was not inquiring; I was just trying to inquire what you meant when you used that language.

A. I will say this: Up to the time that I entered into that

question carefully, whenever that was, I have not inquired very recently.

Q. Did you make any figures yourself working out that proposition? If so, I would like to know.

A. I would say not.

Q. Is not that more of a general statement or belief? If it is more than that, I would like you to give me the exact basis on which you make it.

A. It is a little more than that.

Q. How far is it more than that?

A. I have known from time to time our selling prices of various commodities. I have generally known when prices were advanced, and known when prices were reduced, and in that way I have kept pretty well informed.

Q. Did you take into consideration the volume of business done in the respective periods, and the gross amount coming from sales, and in that way compare prices?

A. No.

Q. How did you compare, by products?

A. By knowing the market price of products from time to time.

Q. Of particular products?

A. Yes.

Q. From each time?

A. Yes.

Mr. Lindabury: Now, Judge, we expect to put in tables and exact statistical testimony on this point. I know you want to get through this case some time or other, as we do. Is it worth while to go on with this?

Mr. Dickinson: Yes. When the head of this Corporation says that the tendency has been downward and the trend has been downward, I want to know whether that is based upon actual calculation or his opportunity of knowledge, or whether it is based on secondary information.

Mr. Lindabury: He said distinctly it is based upon his general knowledge of prices, and not from making of figures or tables or inspection of charts.

By MR. DICKINSON:

Q. You made no figures or estimates?

A. No.

MR. DICKINSON: Then I object to that testimony.

By MR. DICKINSON:

Q. Was any of this information from which you derived that conclusion derived from others?

A. Yes, of course.

MR. SEVERANCE: That is, did he sell all the goods personally himself?

MR. DICKINSON: No, I do not mean that at all.

THE WITNESS: (Continuing) Derived from others that I came in contact with in the business. I saw the presidents of the various companies frequently, and I know when they make increases and reductions generally.

By MR. DICKINSON:

Q. And this was just a general conclusion upon that kind of information?

A. Yes; I will say yes; generally from conversations with our men down the line, different people engaged in business. I meet with the presidents, I meet with the managers of sales representing our different companies at their regular meetings, and I see many of them frequently and try by this connection and in this business way to keep posted in regard to prices. I would be very sorry if I have varied from the exact facts in my statement, and if I have, of course you can prove that I have. I believe I am right.

Q. I am simply trying to find out the sources of that belief.

A. I am being just as specific as I possibly can be.

Q. And you cannot give any figures at all for any of those periods?

A. No.

MR. DICKINSON: I object.

MR. LINDABURY: I would be very glad to have you state the grounds of your objection.

MR. DICKINSON: I object as incompetent and as based upon hearsay.

By Mr. Dickinson:

Q. Can you give the price of Bessemer billets at Pittsburgh for the year 1901?

A. No.

Q. Could you for any of the succeeding years down to 1911?

A. No.

Q. Was the average price of Bessemer billets at Pittsburgh lower in the year 1901 than was the average price of the whole period for the same product from the year 1902 to 1911, inclusive?

A. I cannot answer that question. The price of billets went very low in the fall of 1900, and the whole market was very dull, and it would naturally and probably did take considerable time in 1901 for them to get back to a normal and fair price; therefore the average for that year might be pretty low. I cannot be more specific.

Q. Do you know what the average price of heavy standard Bessemer steel rails at Pittsburgh was in 1901?

A. I think $28, as I understand your question.

Q. Do you know whether the average price for that year was greater or less than the average price for the years 1902 down to 1911, inclusive?

A. For domestic use?

Q. Bessemer steel rails at mills in Pittsburgh.

A. You mean for domestic use?

Q. Anyone that wanted to buy them there.

Mr. Lindabury: Is that intended as a catch question?

Mr. Dickinson: No; it is not intended as a catch question at all.

Mr. Lindabury: There is nobody here who cannot, of course, answer that, if they stop to think for a moment.

Mr. Colton: Which way would they answer?

Mr. Lindabury: Because the price was $26 from the 1st of January to May. Of course the average was a little less in 1901 than it was afterwards.

Mr. Dickinson: Then their answer would be that it was higher from 1902 down to 1911, would it not?

Mr. Lindabury: Of course it would, affected by that fact.

MR. DICKINSON: Do you adopt that as your answer, Judge?

MR. LINDABURY: No, the Judge will answer for himself.

MR. SEVERANCE: Is that question confined to Bessemer rails?

MR. DICKINSON: Yes; Bessemer steel rails.

THE WITNESS: Bessemer steel rails, I think, were sold in 1900 at $26. That is my recollection. In 1901, some time during the year, we fixed a price of $28. Your question might include export rails.

By MR. DICKINSON:

Q. Take domestic prices; answer applying to domestic prices.

A. Give me the question now, stating the sizes and the character of rails.

Q. The question is of heavy standard Bessemer steel rails at mills in Pennsylvania, was the average price for the year 1901 lower than was the average price for the years 1902 down to 1911, inclusive?

A. I think it was slightly lower in 1901.

Q. Lower when?

A. Lower in 1901.

Q. Do you know the price of steel beams at Pittsburgh in the year 1901?

A. No, I do not. I have already told you why. Certainly in the early part of 1901 the prices of all standard products were bound to be pretty low, because of the great slump in the market, in the latter part at least of 1900.

Q. Do you know whether or not the average price of steel beams for the year 1901 was higher or lower than was the average price of steel beams for the years 1902 down to 1911, inclusive?

A. I do not remember.

Q. Do you know whether or not the price of tank plates at Pittsburgh, the average price for the year 1901, was higher or lower than was the average price for the years 1902 down to 1911, inclusive?

A. The same answer.

Q. Do you know whether or not the average price of steel bars at Pittsburgh for the year 1901 was higher or lower than

was the average price of steel bars at Pittsburgh for the years 1902 to 1911, inclusive?

A. The same answer.

Q. Judge, you spoke of dictating a letter which you requested the president to send to the presidents of all the principal roads with whom you were doing business, stating in substance that under no circumstances would any of your people be allowed to accept any rebates, and if they were they were asked to report to you, and if it were ever discovered that any were paid you would take pains to see that it was not repeated, and then sent copies of those letters to the presidents of your subsidiary companies. What was the date of that letter?

A. I do not remember; it is a good many years ago. I may not have given the letter word for word, but I gave the purport of it.

Q. Yes, but fix the date, will you?

A. I do not remember, Judge.

Q. Well, was it about 1905, or earlier or later?

A. It was a good many years ago. I have no way of fixing that date. I cannot except by finding the letter. Perhaps I can do that; I do not know.

Q. You cannot come within a year of it?

A. No.

MR. LINDABURY: Do you desire us to produce the letter, Judge?

MR. DICKINSON: Yes, I would be very glad if you would; I would be very glad to have it.

MR. LINDABURY: I mean a copy; we have not the original.

MR. DICKINSON: Yes.

By MR. DICKINSON:

Q. There was a traffic association, was there not, of the United States Steel Corporation?

A. Well, I do not know whether you would call it an association.

Q. Wasn't it so called?

A. I do not know what they called it. Our traffic men were in the habit of meeting, just as the managers of sales are in

the habit of meeting, to discuss questions in which they were interested.

Q. I notice in Volume VI, Transcript of Record, the following "Minutes of the Traffic Association of the United States Steel Corporation are offered in evidence by the petitioner," and so forth, and this begins January 11, 1909. Did you know of no such Association as that?

A. I did not know the traffic men had given their meetings quite so high-sounding a name, that is all. I know of their meeting, yes, although I never attended any of their meetings and do not know anything about them.

Q. Did you know whether they had a chairman or not?

A. I should think Keefe was Chairman of the Committee.

Q. It is so stated here, J. F. Keefe, Chairman, Volume VI, page 1290. Do you know what became of the minutes of the Traffic Association prior to 1906, that is, those back of 1906?

A. I do not; and never knew they had any minutes, and do not know why they should have any.

Q. Will you make inquiry, so that I can ask you tomorrow in regard to the minutes of the Traffic Association back of 1906?

MR. LINDABURY: One moment, before you answer that Haven't you asked for those minutes, Judge?

MR. DICKINSON: I did not want to anticipate the questions I might ask Judge Gary, but, of course, if counsel brings the matter up now I will ask Judge Gary now and see if he knows anything further about them.

MR. LINDABURY: I do not know a thing about it, but if you wanted these you ought to have asked us before. That is all I mean. If you have asked us and we have not found them I would tell you so.

THE WITNESS: Judge, I had not the slightest knowledge or information in regard to any such minutes if there were any. I will make any promise to you that my counsel will allow me to make.

By MR. DICKINSON:

Q. The only thing I want is that you as head of the Corporation make inquiry as to the minutes of the Traffic Asso-

ciation back of the year 1906, whether or not they are in existence.

A. Our counsel has my permission to make you any promise concerning the furnishing of evidence that he is willing to make.

Q. That is not the question, Judge. I want you as head of the Corporation to make inquiry so that you will be able to answer me whether or not you have those minutes; will you do that?

A. Judge, whatever authority or power I have, you would not ask me to disregard the instruction and advice of counsel who have sole charge of the defense, would you?

Q. No, but I could not assume that they would tell you that you ought not to inform yourself as to the minutes.

A. I will state my position——

MR. LINDABURY: (Interposing) If you wish books of the Corporation found and brought to you you should apply to us. You have been told that again and again. Have you ever asked for these minutes?

MR. DICKINSON: Certainly.

MR. LINDABURY: What answer did you get?

MR. DICKINSON: Well, I was not present. I did not make personal application.

MR. SEVERANCE: You have a lot of minutes in here from the Traffic Association.

MR. COLTON: The reason for these questions is due to your examination. We did not go into the question——

MR. LINDABURY: I do not want an insinuation here that it is necessary to apply to Judge Gary over the heads of counsel in order to get books of this corporation. The instructions of Judge Gary and of the finance committee and the directors have been to give you everything, and we have done that right along, and you have said again and again that we have done it with promptness; and you have expressed your appreciation of it. I do not want a record made here that contains an insinuation that it is necessary to apply to the witness when he is on the stand under oath and direct him to make a search for something or other that we have told you we have not been able to find.

MR. COLTON: We asked for these books this morning, and no such construction was put upon the request, was it? I handed you the memorandum, and it had on it "Ask Judge Gary to produce books of the American Steel and Wire Company of Illinois," and no such construction was put on it then.

MR. LINDABURY: You did not ask Judge Gary; you asked me and I sent down and got them for you.

MR. DICKINSON: We would just as soon ask you now.

MR. SEVERANCE: You have in evidence here a lot of minutes of the Traffic Men's Association.

MR. COLTON: There was a question that I was not allowed to answer; Mr. Lindabury interrupted me, and I would like to answer. It is this: We did not intend to take up questions of rebates, one way or the other, in this case. Judge Gary spoke of having sent letters in 1905. My recollection is that I saw those letters or that I saw references to them, that were sent in 1905. It is also my recollection that the traffic manager's minutes from 1905 back have been destroyed. We are now asking to verify that.

MR. LINDABURY: Why did you not apply to counsel?

MR. COLTON: We did.

MR. LINDABURY: When?

MR. COLTON: Five or six months ago. We were told that they had been destroyed. I was told that, and we were not going into rebates, and did not follow it up. Now, the question of rebates has been raised and we are following it up.

MR. LINDABURY: Why is Judge Gary asked to direct that a search be made? On the theory that counsel have not been telling the truth?

MR. COLTON: No, but counsel sometimes, in regard to certain books, said they could not be produced, or they thought they could not be produced, and afterwards, upon further search, they were produced.

THE WITNESS: I would like to say I am perfectly willing to have Judge Dickinson ask me anything he pleases about rebates, if he thinks there are any or ever were any. I have nothing whatever to conceal, and will be perfectly frank with you, telling you exactly anything I know.

By MR. DICKINSON:

Q. I did not intend to ask anything about rebates, and would not have asked anything about rebates, if this letter had not been brought in. We have made no proof in regard to that letter.

MR. SEVERANCE: I think I can get a copy of that letter, if you want it. Would you like to have a copy of it now? I will see if I can get it for you right away.

MR. DICKINSON: I would just as soon have it now; I would like to get the date of it, yes.

MR. SEVERANCE: I will see if I can get it for you, downstairs.

By MR. DICKINSON:

Q. We will just go on, and take that up later. Judge, you were asked in regard to percentage—I had probably better read the question, so that there will be no question about it. I read from page 8905 of the typewritten record:

"Q. What basis have you for the statement that the 1911 production of welded tubes by the Steel Corporation was fifty-three per cent. of the total?

"A. That is my recollection, that it is about that.

"Q. It is a mere matter of recollection?

"A. It is a mere matter of recollection. I might be mistaken.

"Q. Would you be surprised to learn it was thirty-six per cent.?

"Mr. Colton: I object to that question as leading.

"Mr. Lindabury: I will withdraw it; never mind.

"The Witness: I may be mistaken. My recollection is we had over fifty per cent. of the welded tubes in 1902.

"By Mr. Lindabury:

"Q. No, this is 1911 I am asking you about.

"A. About thirty-seven per cent."

That is, in 1911 you state your recollection to be that the National Tube Company produced 37 per cent. of the welded tubes that were made in the United States. What other concerns in 1911 were making welded tubes?

A. I cannot tell you exactly, Judge; I do not know. Youngs-

town is a producer of tubes. There are a good many producers of tubes.

Q. Can you give the output in welded tubes of any of the competitors for the year 1911 of the National Tube Company?

A. No, I cannot. I feel pretty certain from information such as I have given concerning others that our capacity in 1911 was about 37 per cent.

Q. Judge, how do you arrive at this figure of 37 per cent?

A. In inquiring from time to time of our own people and talking with different tube producers, as I say, particularly, Mr. Campbell, and in looking at statistics, my recollection is that we had got down to about 37 per cent. Those figures, like all others, are subject to correction, Judge; I may be mistaken.

Q. What per cent. did you produce in 1902?

A. I think it was about 57 per cent.

Q. Did you produce more in 1902 or less than you did in 1901?

A. In total quantities?

Q. No, was the percentage produced by you in 1902 greater or less than it was in the year 1901?

A. I do not believe I have ever seen any figures for 1901.

Q. How about 1904?

A. I do not remember. I did not keep track of those years. I kept more or less informed from year to year as the percentages had changed, tried to keep it accurately.

Q. So to the best of your recollection you did not see any figures for 1901?

A. It seems to me that those figures of 57 per cent. were for 1902, but they may be for 1901.

Q. You do not undertake to state definitely?

A. No.

Q. Well, your knowledge on that is very general, is it not?

A. It is pretty general, except in the way I have stated; it seems to me to be specific, but you may not call it so. For instance, with reference to these products from year to year, I have tried to keep posted as to how our percentages were running in comparison with the percentages of all our competitors, all the independents, so that from time to time I

considered myself very well advised as to whether our relative percentages were decreasing or increasing, and at what rate and what amount, so I have thought I was pretty well informed.

Q. Did you have any figures for 1911 or 1910?

A. I do not remember whether I had or not. I cannot tell you that I had. Of course I had the figures of our production from time to time, but I cannot say now from recollection that I had the figures of the independents, but I may have had.

Q. Can you name any year, any period for which you had figures upon which you could calculate a percentage?

A. I cannot name any period or name any figures with reference to those periods.

(Here a letter was produced and handed to the witness by Mr. Severance.)

By MR. DICKINSON:

Q. You have now a copy of the letter referred to in the recent inquiries, written by you?

A. Yes.

Q. What is the date of that letter?

A. September 20th, 1905.

MR. DICKINSON: Do you want to put it in evidence?

MR. LINDABURY: Yes. It is produced on call, and that makes it evidence.

MR. DICKINSON: I do not offer it in evidence at all.

MR. SEVERANCE: You want it. It had better be copied in the record.

MR. COLTON: No; only on account of the date.

MR. LINDABURY: We will put it in as ours, although it is really yours.

MR. DICKINSON: No, it was simply to get the date.

MR. LINDABURY: We offer it. Put it right in the record.

(The letter referred was thereupon marked in evidence "Defendants' Exhibit (Gary) No. 65," and is as follows:)

"UNITED STATES STEEL CORPORATION.
Office of the President.

MEMORANDUM.

Copy. September 20th, 1905.

PERSONAL.

Dear Sir:—

As you know, this Corporation long since adopted the unalterable policy of recommending to subsidiary companies in which it is interested that under no circumstances should rebates be solicited or received contrary to law. This policy will be strictly adhered to, and it is hoped and expected your subordinates will be advised and instructed accordingly.

If anyone should at any time violate his instructions in this respect, notice of the same should be promptly given to the president of the subsidiary company interested and also to the undersigned.

Yours very truly,
W. E. COREY,
President.

A. J. CASSATT,	P. R. R.
GEO. J. GOULD,	Mo. Pac.
F. N. FINNEY,	M., K. & T.
EUGENE ZIMMERMAN,	C., H. & D.
STUYVESANT FISH,	Ill. Cent.
SAM'L SPENCER,	Southern R'y.
M. H. SMITH,	L. & N.
M. H. McDOWEL,	Monon. System—Chicago.
W. H. NEWMAN,	N. Y. Central.
W. H. TRUESDALE,	Lackawanna R'y.
F. D. UNDERWOOD,	Erie.
G. J. GRAMMER,	Lake Shore.
JAS. McCREA, V.-P.,	P. R. R.
F. A. DELANO, V.-P.,	Wabash.
L. C. STUBBS, Traffic Director,	Harriman Lines.
OSCAR MURRAY,	B. & O.
GEO. B. HARRIS,	Burlington System.
E. P. RIPLEY,	Santa Fe.
B. L. WINCHEL,	Rock Island.
A. J. EARLING,	C., M. & St. P.

M. Hughitt,	C. & N. W.
S. C. Stickney,	C. G. W.
Howard Elliott,	Northern Pac.
J. J. Hill,	Great Northern.
J. H. Edson,	Kansas City Southern.
Sam'l Felton,	Chicago & Alton."

Q. Did the United States Steel Corporation ever attempt to operate the works at Troy?

A. No, I think not.

Q. Did they ever attempt to operate the Sharon Tube Mills?

A. I cannot answer that. We found the Sharon mills not up to our expectation, when we came to examine them carefully, generally speaking.

Q. What percentage of all the seamless tubes made in the United States was the Corporation making in the year 1910?

A. I cannot answer.

Q. In the year 1911?

A. I think a little over 50 per cent.

Q. In 1899 and 1900 were not some furnaces in the United States using more than 50 per cent of Mesabi Bessemer ore?

A. I feel quite certain they were at the Illinois Steel furnaces, and possibly at some other furnaces. When I first came in contact with the business they were using about 40 per cent. at the Illinois Steel Works.

Q. I read from page 5514 of the Tariff Hearings, as follows:

"Mr. Cockran: You can get your pig iron $2 a ton cheaper than your competitors and you can produce your rails at least $2 cheaper, and therefore you could sell them, say, at 5 per cent. profit, while he would be selling at an actual loss and would be hastening toward bankruptcy; so if you have competition it is because of your liberality. Is not that so?

"Mr. Gary: Yes; with reference to any line and on the basis of facts which I have given.

"Mr. Cockran: Take the question of rails. I understood that your explanation——

"Mr. Gary: Of course that is true of every line of business.

"Mr. Cockran: No; it would not be true of any line of business.

"Mr. Gary: Take it in the line of business in which there is an element of strength, where some are superior by comparison with others, and, of course, the inferior ones would be driven out.

"Mr. Cockran: I do not think that would be true without you mention some that could be mentioned where that policy is not pursued and where every independent competitor is given the best chance possible. There is no disposition in the case of the meat industry, for instance, to do that. There are a number of meat men competing, but no one of them could drive the others out; but in this industry of yours, the steel industry, I understand you to say that all competitors are practically at your mercy for their existence on this account. You control the raw products and you control the means of transportation, and then you have also, I am free to admit, very efficient organization. With those three items there is no person can compete with you if you choose to drive them out. That is true, is it not?

"Mr. Gary: Of course your whole question characterizes—and I do not like to do that. You put it so broadly that if I could and should answer it in the affirmative, it would almost seem like boasting. We have competitors, you know, who are just as able to take care of themselves as we are, perhaps, particularly in some lines, but I do believe large numbers would be driven out of business if we were willing to drive them out, either because we thought it was right to do so or good policy to do so.

"Mr. Cockran: To be perfectly frank about it, there is nobody who could compete with you if you made up your mind to take this market and exercise all your powers to control it?

"Mr. Gary: Would you not think it looked like boasting for me to say so, if I believe it? I do not know.

"Mr. Cockran: No; I do not think so. I do not think so, because, as I say, I think your position in the trade is so

pronounced that you can afford to be candid without exposing yourself to the reproach of boasting. I think you can speak the truth about that.

"Mr. Gary: I think we have the commanding position in the trade, and I believe we recognize our responsibility to all on account of that position.

"Mr. Cockran: I think you do. If by any chance the management of this stupendous organization should pass from hands as wise and as prudent and as just as ours into the hands of somebody more reckless and more avaricious and with less foresight, and he should undertake to exercise this province, there is little doubt that for a while, at least, he would have a monopoly of the entire trade and be without practical competition. That is one of the conditions that we are confronting.

"Mr. Gary: You are asking for an opinion. Your opinion is just as good as mine."

Now, Judge, state whether or not you recollect giving that testimony as reported there?

MR. LINDABURY: Before the witness answers the question I desire to call attention to the fact that I hold in my hand an official publication of the tariff hearing, and that the questions and answers on the subject referred to materially differ, almost every one of them in this publication, from the questions and answers just read to the witness by Judge Dickinson.

MR. DICKINSON: Will you let me have that?

MR. LINDABURY: Yes, anything I have got.

MR. DICKINSON: I also offer to you, Judge Gary, and ask to have copied into the record, the part referred to by Mr. Lindabury in the more recent publication, and will ask Judge Gary to examine them both and say whether or not he gave the testimony as is shown in these two reports, and if it is reported incorrectly, in what respect.

By MR. DICKINSON:

Q. Now, Judge, if you will look over that, please.

A. I remember Mr. Cockran, I remember the examination, I remember the occasion; I remember something of the sub-

ject, but at this time I cannot remember the questions or answers, and really that is what you are asking me to do. I know the facts very well.

(The following is the transcript referred to by Mr. Lindabury:)

"Mr. Cockran: You can get your pig iron $2 a ton cheaper than your competitors and you can produce your rails at least $2 cheaper, and therefore you could sell them, say, at 5 per cent. profit, while your competitor would be selling at an actual loss and would be hastening toward bankruptcy; so if you have competition it is because of your liberality. Is not that so?

"Mr. Gary: Yes; with reference to any line and on the basis of fact which I have given.

"Mr. Cockran: Take the question of rails. I understood that your explanation——

"Mr. Gary: Of course that is true of every line of business.

"Mr. Cockran: No; it would not be true of any line of business.

"Mr. Gary: Take it in the line of business in which there is an element of strength, where some are superior by comparison with others, and, of course, the inferior ones would be driven out.

"Mr. Cockran: I do not think that would be true of several industries that could be mentioned where no such policy of forbearance as you have described is pursued, and yet where several independent producers are found apparently in active competition. There is no chance in the case of the meat industry, for instance, for any one producer to hold all others at his mercy. There are a number of meat men competing, but no one of them could drive the others out; but in this industry of yours, the steel industry, I understand you to say that all competitors are practically at your mercy for their existence on this account; you control the raw products and you control the means of transportation; and then you have also, I am free to admit, very efficient organization. With those three elements of advantage there is no person or com-

bination of persons that can compete with you if you choose to drive them out. That is true, is it not?

"Mr. Gary: Of course, your whole question characterizes —and I do not like to do that. You put it so broadly that, if I could and should answer it in the affirmative, it would almost seem like boasting. We have competitors, you know, who are just as able to take care of themselves as we are, perhaps, particularly in some lines, but I do believe large numbers would be driven out of business if we were willing to drive them out, either because we thought it was right to do so or good policy to do so.

"Mr. Cockran: To be perfectly frank about it, there is nobody who could compete with you if you made up your mind to take this market and exercise all your powers to control it?

"Mr. Gary: Would you not think it looked like boasting for me to say so, if I believe it? I do not know.

"Mr. Cockran: No, I do not think so. I do not think so, because your position in the trade is so pre-eminent that you can afford to be candid without exposing yourself to the reproach of boasting. I think you can speak of the truth about that.

"Mr. Gary: I think we have a commanding position in the trade, and I believe we recognize our responsibility to all on account of that position.

"Mr. Cockran: I think you do. If by any chance the management of this stupendous organization should pass from hands as wise and as prudent and as just as yours into the hands of somebody more reckless and more avaricious and with less foresight, and he should undertake to exercise this power to its limit, there is little doubt that for a while, at least, he would have a monopoly of the entire trade and be without practical competition. That is one of the conditions that we are confronting.

"Mr. Gary: You are asking for an opinion. Your opinion is just as good as mine."

Q. Was it a fact that you, at the time you gave the testimony, could produce pig iron two dollars a ton cheaper than your competitors?

A. I believe from the standpoint of the Corporation we

could produce pig iron cheaper than our competitors generally; certainly, cheaper than many of them. And you will find by the examination there, I am sure—at least that is my recollection—that I was pressed by some of the members of the Congressional Committee to state some figure, and they would ask me one and another, and another, and I finally admitted it might be $2.

Q. Was it not a fact that at that time the Steel Corporation produced rails at least $2 cheaper than your competitors could?

A. I believe from the standpoint of the Steel Corporation we could. I think the mill cost of production by our mills and some of the other mills was about the same.

Q. Was it a fact that, at that time, you could sell your rails at five per cent. profit while your competitors would be selling at an actual loss?

A. I would not state any per cent. of profit now. I made no calculation, as I said this morning. I did not go there with the expectation of testifying to any such subject as that. I feel certain that by reason of our integrated proposition we had the advantage in cost of production over our competitors generally. If any one having advantage in any business is willing to sell down to his cost price, of course, he could live while his competitors would starve; but that is a most unnatural position for any producer to take and long continue; and practically I do not consider it a very important thing. You did not ask me that. I must admit that is volunteered.

Q. Judge, what percentage of the entire product of the United States Steel Corporation for the year 1901, approximately, after you took over the American Bridge Company and for the year following that, was structural material? That is, what percentage would that bear in money value to the whole output of the United States Steel Corporation?

A. It seems to me that the U. S. Steel Company's percentage at the time I had the first statistics, some time in 1901, I presume, was about 62 per cent.

Q. I do not know whether you understood. I do not think you catch my question.

A. Probably not.

Q. Not what percentage it was of the total of the United States, but what percentage in value that was of the total of the United States Steel Corporation?

A. I cannot give you that in value. I could perhaps approximate the percentage in tonnage, if you care to have me.

Q. I would like to have that, but it is not just what I wanted. No, I will not ask you that. I will ask you this, however:

In value was it not, in comparison with the value of the total products of the U. S. Steel Corporation, very small in percentage—a very small percentage?

A. That is an elastic word, "small."

Q. Would it be five per cent.?

A. In value?

Q. Yes; of what the Steel Corporation sold at that time. I mean the total output of the structural material.

A. I should think it would be.

Q. Would it be ten per cent.?

MR. LINDABURY: Why should he be asked to guess?

THE WITNESS: I was just going to say that I would have to guess.

MR. LINDABURY: No one could know without making a calculation.

By MR. DICKINSON:

Q. Would you like to make an approximation of it?

A. I have not the figures, Judge. I am sorry I cannot give them to you.

Q. Take the American Steel & Wire Company in the year 1902 or 1903 or 1904; take its total products, in value; can you give an approximation of the percentage that that bore to the total value of all the output sold that year by the United States Steel Corporation?

A. I cannot give you the figures, but it was large.

Q. You objected to my elastic phrase. Of course that is just as elastic?

A. It is.

Q. Between what extremes would you say it would oscillate?

A. I should say considerably larger than the structural. The Wire Company makes a great diversity of products, as you know, and their wires run into very small sizes, and very costly tonnages; the returns are large.

Q. At the time you gave this testimony that we have referred to, state whether or not the United States Steel Corporation had a commanding position in the trade.

A. Yes, it had what I probably termed a commanding position there; certainly a very important position.

MR. LINDABURY: I object to that statement. He did not say it had a commanding position.

MR. DICKINSON: How is that?

MR. LINDABURY: Not in this edition.

MR. COLTON: He was asking for a fact.

MR. DICKINSON: That is what he testified.

MR. LINDABURY: That is not in our edition.

(The pending question was repeated by the stenographer.)

MR. DICKINSON: I made no reference to his testimony in my question.

MR. LINDABURY: Very well. I see. I do not mind criticising your questions, but I haven't any right to criticise the Judge's answers, and I did not mean to.

THE WITNESS: That might not be the proper word to use in that connection; depending upon what was understood by the word. The Steel Corporation never had the power to command.

By MR. DICKINSON:

Q. Returning now to the same volume, page 5515, I will read on now a continuation of where I stopped before.

"Mr. Cockran: I think it is, on your statement."

Your previous answer was "you are asking for an opinion. Your opinion is just as good as mine." Now I continue reading:

"I think it is, on your statement. Now among the conditions, to analyze the conditions that contribute to that situation, an important element is your ownership and control of the ore supply.

"Mr. Gary: Yes, of course it is.

"Mr. Cockran: You practically do control the ore supply of the country?

"Mr. Gary: No; not now, not for the immediate future.

"Mr. Cockran: Well, the ultimate supply?

"Mr. Gary: Yes; I think so; that is, pretty nearly; it is not absolute control."

Now, Judge, didn't you give that testimony?

A. I think I did. I certainly labored under a misapprehension of the facts at that time. I did not have the facts and figures at that time.

Q. Those were the facts as you understood them then?

A. Yes; I explained, I believe, what I meant there, either there or before the Stanley Committee. I believed at that time that we had a majority of the best ores of the Lake Superior District, and that the time would come sooner or later, even if thirty-five or forty years hence, when we would have some ore of that character and quality and they would not have, and that is what I meant by ultimately.

Q. Didn't you think at that time that you had seventy per cent. instead of a mere majority?

A. I think I did.

Q. How long had you been of that belief, Judge?

A. I cannot answer, because I have no recollection on that subject. I believe, though, I thought at that time we had about seventy per cent. of the ore, and I was very poorly posted.

Q. Your answer, then, was based, however, upon knowledge and information that you had derived from your connection with the administration of the affairs of the United States Steel Corporation, was it not?

A. I think it was derived from the fact that some time soon after the Corporation was formed I got the impression from the statement of some of our people that we had about seventy per cent. of the highest quality of ore in the Lake Superior District, and I had not looked up the intermediate facts and figures. Of course I was wrong, terribly wrong.

Q. You were one of the principal organizers of the Steel Corporation, were you not?

A. Yes.

Q. You regarded the ore as really the life of a corporation of that character, did you not?

A. I regarded it as very important.

Q. Did you base your conclusions upon what you heard somebody say at that time, without any investigations of your own?

A. Yes.

Q. Or at a previous time?

A. No.

Q. When?

A. Subsequently. I do not think the question of percentage of ore was discussed or considered at the time we formed the Steel Corporation. I have no recollection of the subject having been discussed at all. I do not think we had any figures showing what the holdings of our competitors were; I am sure we had not. I knew that various companies like the Cleveland Cliffs, Oglebay Norton & Co., M. A. Hanna & Company, and Corrigan, McKinney & Company, and so forth, had very large holdings of ore, but how much they had was not considered. I did not know anything about it.

Q. You knew about your own holdings, did you not?

A. Oh, yes; I knew something about that. I knew something about our own tonnages.

Q. You knew something about your own tonnages and where they were located?

A. Yes.

Q. And the quality of the ore?

A. Yes; but relative percentages were not considered until afterwards, and I remember hearing someone say some time, a year or two after we were organized, that we had about seventy per cent. of the best ores in the Lake Superior region. It seems to me I did. I have that impression.

Q. And you never had any reports of the ore holdings?

A. Of our ore holdings?

Q. Yes.

A. I think we had.

Q. Didn't you have a report from your engineers of the Oliver Mining Company about the time of the Hill lease, showing what your estimated percentage of all the ores in that region was?

A. I do not think I did. I do not remember.

Q. At the time this suit was commenced where were the ore holdings of the Pennsylvania Steel Company?

A. They were largely in Cuba, I think.

Q. What did they have in this country?

A. I cannot tell you exactly, but I am quite certain they had some of the northern ores.

Q. You do not know where they were?

A. No; if I did know I have forgotten.

Q. You do not know the extent of them?

A. No.

Q. Or the quality of the ore?

A. No; I think, though, they had some ores on the Mesabi range.

Q. At the time this suit was begun where were the ore holdings of the Bethlehem Company?

A. They were in Cuba largely, if not altogether. I believe they did have some in northern New York.

Q. Do you know where they were?

A. In the Adirondacks.

Q. Do you know anything about the character of those ores?

A. I know something about it.

Q. Do you know what their metallic content is?

A. No; I think it is pretty high in iron content, good structure, very good structure, very good for mixing.

Q. Do you know anything about the expense of mining it and transportation?

A. No. I do not think it is great; I do not think it is very large.

Q. You haven't any knowledge on that?

A. I have had a good deal of information about that from time to time, because I have inquired into it, examined it and considered it.

Q. Do you know the extent of their holdings there, or tonnages?

A. No; I do not.

Q. Do you know how far they have been able to avail themselves of it; that is, what proportion or percentage of supply, to their uses?

A. No.

Q. At the time the Steel Corporation was formed, and down to the time this suit was brought, had not the Lake Superior ores been the base of the steel industry of this country?

A. Your question is too broad. The Colorado Fuel & Iron, for instance, gets its ores in the West, and largely, and I think at times altogether, the Pennsylvania and the Maryland Steel get their ores from Cuba. The Bethlehem Steel gets its ores largely from Cuba, and I think partly from the Adirondacks. The Lackawanna and the companies located at Pittsburgh and Chicago and Johnstown, get their ores largely, if not altogether, from the northern mines of Minnesota and Michigan.

Q. Take all the ores in the United States for the year 1911. Have you any idea as to the percentage of those ores compared with the ores used for that year from the Lake Superior region?

A. I cannot give you the exact percentages, but I should think at least 75 per cent.

Q. From the Lake Superior District?

A. Yes.

Q. And has it not been that percentage or more from the time of the formation of the Corporation down to the time this suit was brought?

A. I should think so. I might have the percentage a little too large, but I give that figure as my estimate.

Q. Judge, did not a careful estimate of your experts show that the Hill properties contained about 300,000,000 tons, much of which was not merchantable ore?

A. I would answer the first part of your question in the affirmative. I do not know that I could state definitely about the latter part of it; if, as I suppose, you are referring to the opinions of our experts at that time.

Q. At what time?

A. At the time the reports were made; that was your question, as I understood.

Q. About what time was that; the year 1911, wasn't it?

A. At the time the lease was taken.

Q. They made annual reports, though, didn't they?

MR. LINDABURY: Your inquiry was as to estimates at the time the lease was taken. That is what the previous testimony was directed to.

THE WITNESS: They did not make annual reports, but they did make different reports; of course, as we explored the properties from time to time and discovered more ore, we would get more reports.

By MR. DICKINSON:

Q. I am asking you about the time the suit was brought in this case if 300,000,000 tons was not about the estimate of merchantable ore?

A. I should think yes, of our people, as far as they had explored; I rather think it was about 350,000,000 tons.

Q. Have they made any estimate since that?

A. No.

Q. You do not know of any accurate estimate since that?

A. No, I do not.

Q. Have you any information since that as to estimates?

A. I have a good deal from the Hill people.

Q. But not from your own people?

MR. LINDABURY: Judge Dickinson, would you mind right here letting him say whether the reports that he refers to are the ones that are in the ore books that are in evidence?

By MR. DICKINSON:

Q. Do you refer to those, Judge?

MR. LINDABURY: They are in evidence, and then we have the exact figures in that way. I only want to be able to correct his testimony by the tables themselves which are in evidence; I mean to give the exact amount.

THE WITNESS: I do not know that you could do it even then. What do they show?

MR. LINDABURY: 312,000,000.

By MR. DICKINSON:

Q. Judge, you spoke of Mr. Morgan stating to you that parties had offered to sell to him the control or majority of all the stock of the Tennessee Coal, Iron & Railroad Company?

A. Yes.

Q. And that you told Mr. Morgan that the matter had been looked into and it was not desirable from any point of view. I believe you stated that in substance?

A. I told him we had considered the subject from time to time and did not desire the property.

Q. Hadn't you decided conclusively against its acquisition at that time?

A. Any decision is a conclusive decision.

Q. You were opposed to the acquirement of it at that time?

A. Yes, I think so.

Q. And Mr. Frick was?

A. I think so, yes.

Q. You were asked, were you, by Mr. Morgan your estimate of the value of the stock, or to give him an estimate of the value of it?

A. I do not remember that; it may have been so.

Q. Didn't you state that the stock in your judgment was not worth over 50 cents?

MR. LINDABURY: You mean in his testimony?

THE WITNESS: I think you have got the wrong dates. I told him that at the time of the panic, when it was proposed by Mr. Ledyard to sell the stock.

By MR. DICKINSON:

Q. You told him then?

A. Yes.

Q. Did Mr. Frick concur in that view?

A. I think he did.

Q. When you say 50 cents what do you mean; fifty cents on the dollar?

A. I mean $50 per share, assuming the shares to be $100 shares.

Q. After that time you got some information, didn't you, about the Tennessee Coal, Iron & Railroad Company?

A. Up to what time?

Q. Between that time and the time that you came to the conclusion that you would be willing to buy it.

A. Yes, we had some information.

Q. Didn't you get information of such a character as to change your opinion and make you very anxious to get it?

A. No.

Q. What kind of information did you get that you did not have before?

A. We were seeking information largely in regard to the condition of Moore & Schley; that was the question of highest and first importance, because we wanted to be certain that if we made this purchase it would do what Mr. Morgan supposed it would do, namely relieve the financial situation; but the principal business of the Tennessee Company was the manufacture of rails, and we wanted to see what the cost was. The information we got in that respect was not favorable at all; and then another thing we were very anxious to know, that was the financial condition of the Tennessee Coal & Iron. We knew from general information that they were very heavily in debt, but we wanted to see how much, what its limit was, and when the indebtedness was maturing, and so forth, so as to be pretty certain about what liability we were assuming, but we did not have time to make a careful examination of their property and business.

Q. But didn't the information which you got in that way and the information you got in regard to the ores make it highly desirable for you to acquire that property for reasons other than those connected with the panic?

A. No.

Q. Didn't they change your views and opinions as to the character of property?

A. No; although I did form the opinion that by the expenditures of large sums of money we would eventually be able to make it pay a fair return on our investment.

(Thereupon an adjournment was taken until to-morrow, Friday, June 13, 1913, at 10:30 o'clock a. m.)

SEVENTY-FIFTH DAY.

EMPIRE BUILDING,
71 Broadway, New York City.

Friday, June 13, 1913.

Before SPECIAL EXAMINER HENRY P. BROWN.

Present on behalf of the United States, MR. DICKINSON and MR. COLTON.

Present on behalf of the Defendants, MR. LINDABURY, MR. SEVERANCE, MR. BOLLING and MR. REED.

ELBERT H. GARY,

the witness under examination at the taking of the adjournment, resumed the stand.

CROSS-EXAMINATION (Continued),

By MR. DICKINSON:

Q. Judge, was Oliver H. Payne, who was connected with the transaction of the Tennessee Coal, Iron & Railroad Company, in a way, a stockholder then of the United States Steel Corporation?

A. Not so far as I know.

Q. Do you know whether or not he has been since?

A. I do not think so. I never heard of his being.

Q. You do not know?

A. No.

Q. Was not the Tennessee Coal, Iron & Railroad Company, shortly after it was taken over by the United States Steel Corporation, making one-half of the entire output of open-hearth rails produced by the United States Steel Corporation?

A. I cannot answer that, Judge Dickinson, from memory. They were making what they called open-hearth rails in considerable quantities. They proved to be very defective, as you know.

Q. I am not speaking of what they were making when you took it over.

A. I thought you were.

Q. Oh, no. During the years 1908 and 1909, for instance, after you took it over, did it not, at that time, make fully one-half of the then output of open-hearth rails produced by the United States Steel Corporation?

A. I do not remember, Judge. We were going into the open-hearth rail business very fast. We were building open-hearth furnaces then.

Q. How about 1910?

A. I have not the figures.

Q. Well, it was making a very large proportion, was it not?

MR. LINDABURY: When?

MR. DICKINSON: In 1910.

THE WITNESS: It certainly was in 1908.

By MR. DICKINSON:

Q. And increased, did it not?

A. Yes; I think it did.

MR. LINDABURY: Up to what time?

MR. DICKINSON: During 1909 it increased.

MR. LINDABURY: I suppose there was a change when the Gary plant was finished?

THE WITNESS: Oh, no; the Judge means the Tennessee Coal, Iron & Railroad Company was increasing its production.

MR. LINDABURY: No, the Judge was asking about the proportion of the Steel Corporation's open-hearth rails that were made by the Tennessee Coal, Iron & Railroad Company.

By MR. DICKINSON:

Q. Did you understand that, Judge?

A. I understood you to ask me if the Tennessee Coal, Iron & Railroad Company was increasing its production.

MR. LINDABURY: That was not what he asked.

By MR. DICKINSON:

Q. I first asked you whether or not, in the year 1908 and also in the year 1909, taking the output for those years severally, it was not, during each of those years, making fully

one-half of the entire output during each of those years of open-hearth rails by the United States Steel Corporation.

A. I cannot answer from recollection.

Q. Can you give any approximation of it?

A. I cannot. I do not happen to remember.

Q. Judge, I understood you to say that, as a business proposition, considering the question of dollars and cents, from any standpoint, you would not have considered favorably the acquisition of the Tennessee Coal & Iron properties?

A. I did.

Q. And that that was the view of Mr. Frick?

A. It was.

Q. Was it the view of Mr. Morgan?

A. I do not know. Mr. Morgan had nothing whatever to do with the business part of that transaction; I mean, so far as I know he did not discuss or consider the question as to whether or not it was a good purchase for the U. S. Steel Corporation. He left that entirely to us.

Q. But he consulted you about it and asked your views about it?

A. I do not know that he did that, even. He did say that if we thought it was a good business transaction, if we could afford to take it, then he hoped we would, for that was the only way of allaying the financial condition or disturbance.

Q. Was he not present at the meeting of the finance committee when these questions were disposed of by the Corporation?

A. Yes; as I remember, he was.

Well, Judge, really the decision as to whether the United States Steel Corporation could afford to buy this, the discussions in detail of these questions were confined largely to two or three members of the Committee, I should say, and then were not very fully discussed before the finance committee, although they knew enough about it to act upon it.

Q. You and Mr. Frick advised them of your views?

A. Yes.

Q. I also understood you to say that you could have taken the money which you knew at the time was necessary to be expended in the development of the Tennessee Coal & Iron

properties in order to produce a fair interest on the investment to a very much greater advantage, and worth very much larger profits by the extension of your works at any of your other plants several times over.

A. If I said any of our other plants, that might be a little too strong, but I would still say most, if not all, of them; many of them, at least.

Q. Who voted for the acquisition of the Tennessee stock?

A. Who voted for it?

Q. The finance committee, didn't they act upon it?

A. They all did. The records will show. I can tell you four or five of them, anyway. I think Mr. Ream and Mr. Widener were not present.

MR. LINDABURY: Mr. Ream was present at all but one.

THE WITNESS: He was not present when it was finally decided.

By MR. DICKINSON:

Q. The finance committee directed the use, in the purchase of the stock, of $30,000,000 of bonds of the United States Steel Corporation, did it not?

A. I think so.

Q. And they were so used?

A. They were, whatever the amount was.

Q. The bonds bore interest, did they?

A. They did.

Q. At what rate?

A. Five per cent.

Q. Please look at this sixth annual report which I here show you of the United States Steel Corporation, under the heading of "Acquisition of Tennessee Coal, Iron & Railroad Company," page 25. I want to ask you some questions about it, and that may assist you in answering those questions. What amount of stock of the Tennessee Coal, Iron & Railroad Company was acquired at that time by the United States Steel Corporation?

A. $30,374,825 par value of the common stock and of common stock subscription receipts of the Tennessee Coal, Iron & Railroad Company, being all but $220,160 of the total of

said common stock and common stock subscription receipts issued as outstanding December 31, 1907.

Q. You mean $30,000,000 of the stock at par of the Tennessee Coal, Iron & Railroad Company was acquired?

A. Stock and stock subscriptions, yes.

Q. You used for that purpose, as I understand you, thirty millions of bonds which you had on hand, and also $5,407,000 of bonds?

A. I have not the figures, Judge.

Q. What amount of bonds did you use; what does that show?

A. Enough to pay for them.

Q. Doesn't it show the actual amount there?

MR. LINDABURY: If it shows, then it speaks for itself.

By MR. DICKINSON:

Q. What amount of bonds was used?

MR. LINDABURY: You mean according to that report?

MR. DICKINSON: Yes; and I mean as a fact, too.

THE WITNESS: For $29,742,170 of the same purchased at par the Corporation delivered in payment its ten-sixty year five per cent. sinking fund gold bonds as the equivalent of cash —those are the Steel seconds—at the rate of $11,904.76 par value of said bonds for $10,000 par value of Tennessee Coal, Iron & Railroad Company common stock. The balance of $632,655 of said stock acquired was paid for in cash, being the installment of 20 per cent. payable December 15, 1907, on the common stock subscription receipts.

Q. Leaving out the question of the money value of the bonds, did it not, for the $29,742,170 of stock par value of the Tennessee Coal, Iron & Railroad Company, deliver in payment bonds of the United States Steel Corporation in the sum of $35,407,000?

A. Par value of bonds; I presume the figures are right.

Q. Now, thirty million of this you had on hand, did you?

A. Yes.

Q. Then, did you purchase the balance?

A. I think we had them all on hand.

Q. You think you had them all on hand?

A. I think we had them all on hand. $30,000,000 we had on hand as having never been actually sold to the public, and the others we had purchased for some of our funds, our sinking fund, or special fund, or other investment, quite likely for investment. In those days we were investing our surplus money, more or less.

Q. Then you had on hand and issued in payment for that amount of stock $35,407,000 of bonds of the company bearing five per cent. interest?

A. Of course you are dealing now in figures.

Q. I am dealing with what I understand that to show.

A. It seems to me you ought not to ask me to verify these figures. Here is the report and it speaks for itself, and I do not want to get caught by making some wrong additions or something.

Q. I am not trying to catch you on that. I am simply trying to show, as a matter of fact, just what that report shows.

A. The report is accurate.

Q. The report is accurate?

A. I am very sure of that.

Q. Then does the report show that for $29,742,170, par value of the Tennessee Coal, Iron & Railroad Company's stock, the United States Steel Corporation gave in payment $35,407,000 of bonds of that company bearing five per cent. interest?

MR. LINDABURY: I object to that. The report speaks for itself. It is in evidence.

THE WITNESS: I will leave you to answer that question from the report.

By MR. DICKINSON:

Q. Couldn't you tell me whether it does or not; I have not the report here. You have the report before you.

A. I am only trying to be over careful. I do not want to make any mistakes in figures on the spur of the moment when I tell you about the basis of the exchange; you can make your own figures.

Q. I am not speaking of the money basis of the exchange.

A. We gave bonds for stock; we gave U. S. Steel bonds

because they could be sold in the market for cash for the Tennessee Coal & Iron stock and on about the basis which I have heretofore stated, and the exact figures I think are no doubt stated in the report.

Q. That is to say, you gave bonds $35,407,000?

A. Yes, at par value; they were selling in the market at about 84.

Q. At par value?

A. Yes.

Q. But you put out the obligation of the company to that extent, bearing interest, did you?

MR. LINDABURY: I object. What they did in that respect is self-evident, and is shown by the report.

THE WITNESS: I say yes.

By MR. DICKINSON:

Q. Now, Judge, you stated that at the time this matter first came up and the time you acquired this property you did not regard the stock of the Tennessee Coal, Iron & Railroad Company as worth more than fifty cents on the dollar, and that Mr. Frick concurred in that view with you?

A. That is true.

Q. Then that would make your then estimate of the value of that stock $14,871,085, wouldn't it?

A. How is that?

Q. I say that would, if made on that estimate of value, make the then value of the stock $14,871,085?

A. Very likely.

Q. I understood you to state at that time you were aware that you would have to make large investments in order to produce a fair interest on this investment, and that such large investments, if expended upon other plants of the United States Steel Corporation would have yielded a profit several times over what it would yield in the Tennessee Coal, Iron & Railroad Company?

A. That was my opinion and is now.

Q. And you were aware of that at that time?

A. I have answered that question.

MR. LINDABURY: He must have been if that was his opinion at that time.

By MR. DICKINSON:

Q. And your associates were aware of it at that time?

A. I cannot speak for my associates.

Q. You have spoken for them on page 8967 of your direct examination.

A. On that subject?

Q. The question was asked:

"Q. Were you aware of that at the time?

"A. I was, thoroughly.

"Q. And were your associates aware of it also?

"A. They were."

A. Then let that go as my answer.

MR. LINDABURY: You do not want to change that?

THE WITNESS: I assumed that; I assumed they were aware of that.

By MR. DICKINSON:

Q. You stated it in your direct examination, according to your information and belief, didn't you?

A. Yes; I make the same assumption now. I do not remember to have talked with them about it. I am very certain Mr. Frick had the same opinion that I did.

Q. Now, you went, then, to improving the Tennessee Coal, Iron & Railroad Company, and spent, as I understand, out of the Corporation's money, something like nineteen millions of dollars?

A. Yes, including the earnings of the Tennessee Coal & Iron in the meantime.

Q. How much of that was new money put in by the Corporation and how much of it was earnings?

A. Approximately $14,000,000 of it was money advanced by the United States Steel Corporation direct, and $5,000,000, or such a matter or about that sum, was earnings of the Tennessee Coal & Iron during the years commencing in 1907 and ending at the time the bill in this case was filed.

Q. Then that $14,000,000 of new money put in, added to

the bonds of $35,407,000, made nearly $50,000,000 that was expended in that enterprise?

A. 35 and 14 are about 49.

Q. It is $35,407,000; making about $49,000,000?

A. That is all you are asking me—to add those two figures?

Q. Yes. Now, Judge, if you at that time believed that the stock was not worth any more than you have stated, and issued the obligations of the company in that amount and knew at the time that you would have to make this large expenditure which you could have expended upon other plants for the United States Steel Corporation, and which would have rendered you a return several times greater, would it not have been better for the United States Steel Corporation to have presented Moore and Schley with ten or twelve million dollars, rather than to make that transaction?

A. No; I do not think so. You must remember the finance committee represented the board of directors, and the board of directors represented the stockholders of the United States Steel Corporation, and we were responsible to them and had to account to them, and therefore, even to relieve the terrible financial conditions of the time, we had to do our business in such a way as to make it appear to us we could eventually work out of it as a safe proposition, or at least a fair proposition.

Q. Would it not have been a better financial transaction to have lent Moore & Schley $12,000,000 upon a majority of the stock of the Tennessee Coal, Iron & Railroad Company than to go into the venture as you have described it?

A. On the basis of one being willing to speculate on a proposition at that time, occupying positions we occupied, perhaps I might answer your question in the affirmative; but if we had made that gift at that time, we could not have excused ourselves to the stockholders. We would not have been considered by them, probably, as good business managers. If the United States Steel Corporation at that time had taken $15,000,000 out of its treasury and had donated it to Moore & Schley, even to stop a panic of that kind, I doubt if the stockholders would have excused us. We hoped at that time,

and we believed at that time, that we would eventually work out of this thing by taking this property over. We were under very extraordinary circumstances, and it was not easy to determine just exactly what to do. I suppose the accounts receivable of the United States Steel Corporation at that time aggregated many hundreds of millions of dollars. Of course we were very much interested pecuniarily in the panic. Not only that, we were besieged on all hands by bankers and people generally in distress in New York City to do all we could to relieve the situation. The course we adopted, the course we pursued we believed then, and I believe now, was the very best and most prudent that could have been taken at that particular time under those circumstances.

Q. Judge, you did not answer my question; you answered another question.

A. I beg your pardon.

Q. The question that I first asked you was as to a donation. You have answered that; but the question that you were responding to when you gave your last answer was this: Whether or not it would not have been far better to have loaned to Moore & Schley ten or twelve millions of dollars upon a majority of the stock of the Tennessee Coal, Iron & Railroad Company than to have gone into a transaction such as you understood at the time this transaction was?

A. You are asking, now, if it would not have been better to loan money on the stock?

Q. Yes.

A. In the first place I would say no, it would not have been. I do not think they had the stock to give as security. They could not give us good security. We would not have been justified in making the loan. If you mean to ask me whether we probably, looking back at it now, at this date, could not have made more money even to have given them $15,000,000, that is one thing.

Q. No, I am not asking you that; I am asking you as of that date. I am asking you to look back at it, through the eyes with which you looked at it then, as you have described it. Instead of buying $29,000,000 worth of stock and issuing obligations of the company for over $35,000,000, carrying with

it an understanding that you would have to invest a large amount which you could have invested to much better advantage in other plants, would it not have been far better to have loaned upon a majority of that stock ten or twelve millions of dollars?

A. In the first place, Judge, we had no such question as that presented. We had no opportunity to make any such transaction as that. Mr. Ledyard represented the Tennessee Coal & Iron securities, and was trying to sell them. While we talked about making a loan of money to them, it was not accepted. He gave us no alternative; he did not offer to take any sum of money on loan. I will say, however, if he had offered, it would not have been good business at all. The directors would not have considered themselves as having intelligently and fairly and honestly represented the stockholders in making that kind of a loan.

Q. You did offer, however, to make a loan of $5,000,000?

A. We offered to take the risk of a $5,000,000 loan, yes.

Q. Did you try to loan $10,000,000?

A. Oh, no; the question was not further discussed. As I say to you, Mr. Ledyard, when we offered to lend the money, came back to me—and I am sure he will tell you so—and said there was no alternative; there was nothing to do to save the situation except to make that purchase.

Now, Moore and Schley, as I understood, did not have any security, not ample security to offer us for making any such loan.

Q. I understand that they had a majority of the stock that they could use if they wanted to.

A. We understood that they had assets and could control the disposition of a majority of the stock. There are a good many ways in which we could have made plenty of money if we had been so disposed at that time, with our $75,000,000 in the bank.

Q. How much did you understand they had in assets and how much did you understand they could control?

A. I have forgotten those figures now.

Q. You do not know how much, whether it was simply a subject of the control that they could have obtained, that

was owned by others, and how much they had of their own or had a claim on such as they could use?

A. I say now I do not remember the figures. I remember the circumstances and questions involved quite distinctly.

Q. You spoke on your direct examination about a paper which you drew up. That was after the failure of the Empire Company to materialize, was it not?

A. It was.

Q. Did not the Federal Steel Company then enter into an agreement with the Carnegie Company and others, first with the Carnegie Company and afterwards with others, an agreement by which they would divide territory in the selling of rails, and that they would sell at a price and settle on a basis of average prices?

A. No.

Q. They did not?

A. No.

Q. Will you state what that agreement was?

A. That agreement in substance, not stating it with accuracy——

Q. I am not speaking of the paper, but I am speaking of the agreement under which you operated.

Mr. Lindabury: Before you answer that, Judge—your question is so framed as to be confusing. You asked what the agreement was, and as it was in writing, the Judge was starting to tell it properly enough. Then you said what you wanted to know was their operations.

Mr. Dickinson: I am not going to question him now about the contents of that paper.

Mr. Lindabury: I know, but I mean to say that your question goes back to asking for the agreement; what they actually did in practice——

Mr. Dickinson: My question is this: Did not the Federal Company and the Carnegie Company operate with each other in such a way in respect of the sale of rails that they divided between them certain territory, and also took into consideration the amount sold by each and the prices, and then averaged the prices so that each would participate in the outcome according to the sales made at those prices?

THE WITNESS: So far as I know, they never agreed to divide territory. Whether in actual practice, by the meeting of committees, that resulted more or less in that division I cannot answer. I do not know that it did in the practical transaction of the business.

Following along after that there was tonnage transferred to try and equalize, and for a period, I believe, there were balances paid on the same basis.

Q. Were you present in company with Mr. Carnegie, Mr. Frick and Mr. Porter, or any of them, when this matter was discussed, after the Empire matter fell through?

A. I was at the time this agreement I have testified to was drawn and signed, at Mr. Carnegie's house.

Q. Well, how soon before it was understood that the Cambria Iron Company and the Colorado Fuel & Iron Company would work with you?

A. I could not tell you, but it seems to me it was very soon after that. You confine it to the Cambria, do you?

Q. I will see if this recalls it to your recollection. In Volume III, Goverment Exhibits, page 1163, at a meeting of the board of managers of the Carnegie Steel Company, November 22, 1898, Mr. Schwab says:

"The arrangement suggested by Mr. Carnegie between the Federal Steel Company and ourselves has been made, and is now in working shape, excepting as to a few details in regard to selling. These Mr. Peacock will take up to-morrow. The Cambria Iron Company and the Colorado Fuel & Iron Company—these being factors in the West—will work with us."

Do you know whether at that time they had agreed to work with you as early as November 22, 1898?

A. I should say from that minute they were, at that time. I think I testified to that substantially the other day.

Q. Now, before this, did they have what was known as a rail makers' association, what was called a rail makers' association?

A. Not so far as I remember.

Q. Did your company make reports to anybody of sales and prices during the period that this understanding or arrangement continued?

A. I presume it did.

Q. Were reports made to your company by others directly or indirectly showing their sales as a basis of settlement?

A. In some way or other each knew what the others were doing.

Q. On page 1255 of the same volume, meeting of June 27, 1899, the following occurs:

"Mr. Lauder: But we will have at least as many in 1899 as in 1898.

"Mr. Schwab: I think so, or even more; but look at the prices. The Rail Makers' Association report shows, for the 7 months ending May 31, 1899, the average proceeds of No. 1 Rails sold since November 18, 1898 (excepting on our own we have no way of ascertaining the average price on the old contracts which were not taken into the Association accounts), to be:

The Carnegie Steel Co., Ltd.	$17.065;
Illinois Steel Company	18.119;
Cambria Steel Company	18.384;
Colorado Fuel & Iron Company	20.329.

"An equalization of the proceeds gives us a credit for the 7 months of $100,862.90, increasing our proceeds; but the fact remains that we, and the other mills, have large tonnages sold at low prices, that is, prices which are low compared with present quotations—with what is charged for small lots."

What I want to ask you, Judge, is: Did not, when these companies sold and reported their prices, they equalize the prices so each participated in that way in the results of sales of the other?

A. I think that was true for a period, Judge Dickinson. They refer there to a rail association. I think that was simply their term. I know of no rail association.

Q. On page 1259, the same volume, meeting of July 10, 1899, the following occurs:

"Mr. Peacock, as General Sales Agent, submitted the following report:

SALES OF STANDARD RAILS POOLED SINCE NOVEMBER 18, 1898.

	Sales.	Options.	Totals.
Carnegie	407,393	.....	407,393
Illinois	488,859	.....	488,859
Cambria	118,612	.....	118,612
Colorado	45,171	1,600	46,771
Total	1,060,035	1,600	1,061,635"

Now, what proportion of rails was that then produced of all the standard rails, such as were embraced in this action, in the United States?

A. I cannot answer that.

Q. On page 1262 of the same volume, a meeting of July 25, 1899:

"Mr. Peacock, as General Sales Agent, submitted the following reports:

SALES OF STANDARD RAILS POOLED SINCE NOVEMBER 18, 1898.

Carnegie	407,732	Gross	Tons;
Illinois	491,090	"	"
Cambria	120,727	"	"
Colorado	46,699	"	"
Total	1,066,248	"	"

"We have no record of any options outstanding.

* * * *

"Mr. Peacock: While in New York last week I had a conference with MM. Gary and Porter, and we also had Mr. Stackhouse on the telephone, the subject being a sale which the Federal Steel Company desire to make of about 40,000 tons of rails, to be made and delivered at the convenience of the Illinois Steel Company during next year, for the Chicago & North Western Railroad. Their idea of price was $29.00 Chicago. They believe that should be the price for next year on such business as comes to us, but that we should not solicit any business yet. That would make the price

$28.00 Pittsburgh. Mr. Stackhouse said $28.00 Pittsburgh was high enough, and that he would like to sell half their product at that price. I said I did not think it necessary that we should decide how much we should sell, as all inquiries are reported to the Board. No doubt some of the Roads will be very willing to cover their requirements for next year at that price.

"Mr. Schwab: As I understand the Agreement, while we are not to solicit any business, we are to be allowed to sell at $28.00 Pittsburgh. Is there any objection to this price for such business as comes to us?"

Was it or not a fact that all inquiries were reported to the board at that time?

MR. LINDABURY: I object to this question because it embodies a reading of this minute, and it violates the rules of evidence.

By MR. DICKINSON:

Q. Do you know anything about a board?

A. No, I do not.

Q. Do you know anything about inquiries being reported to the board?

A. No.

Q. Was there a committee?

A. There was a committee, I think.

Q. Were inquiries reported to the committee?

A. I think they were.

Q. That is to say any inquiry of any of these parties who were thus operating together was referred to the committee.

A. I won't state it as strong as that.

Q. How would you state it then?

A. There were inquiries submitted to the committee more or less, I believe. To say that all inquiries were submitted to the committee, I do not think so.

Q. Do you recall this meeting?

A. No, I do not recall it at all, and stated as it is stated there it did not take place. That is, nothing occurred such as Peacock represents there according to those minutes.

Q. Let us understand what you mean by that?

A. I will tell you exactly what I mean.

Q. What do you mean?

A. I will state it as favorably to your side as the truth will permit. If Mr. Peacock came to see me at that time—What was the month?

Q. The month was July 25th, 1899.

A. If he came to see me at all at that time and had any conversation with me about the price of rails, he asked me when we were going to fix the price of rails for the following year and what price we were going to fix, and I told him, and that is as far as that went.

Q. How about communicating with Mr. Stackhouse? Did you have any communication with him?

A. I had no communication. He may have had. I cannot say he did or did not have. I do not know. I know perfectly well what was in my mind at that time. I know perfectly well how we were doing the business, and therefore what I would say and what I would not say.

Q. Do you remember any conference at which you were present, Judge, where the question came up about the Federal Steel Company desiring to make about 40,000 tons of rails and delivering them to the Chicago & Northwestern Railroad?

A. I do not remember that at all; but at that time it would have been a natural thing for the Chicago & Northwestern to ask the Illinois Steel Company for space on its books, for rails for the following year, and the price that was to be asked; and if Mr. Peacock had asked me I would have communicated that fact to him, and would have told him exactly what we proposed to do.

Q. Do you recall any question of soliciting business within certain territory, or an understanding in regard to that one way or the other, under this arrangement?

A. I do not. The Chicago & Northwestern, of course, would be the natural territory for the Illinois Steel.

Q. I am not asking about the Chicago & Northwestern particularly, but the general question as to whether you recall any such thing as that.

A. I do not.

Q. You do not recall it one way or the other?

A. No. Of course it is a fact that, inasmuch as those companies were to divide tonnage, that is, to equalize tonnage, each would try to keep its sales within the natural territory of its mills.

Q. And that was done?

A. I have no doubt it was, more or less.

Q. And under this arrangement that you were then operating under?

A. Whether it was under that arrangement or not, the arrangement was as I have stated, and that would be the natural thing to do; that is as far as I can say. I am not at all disposed to change the facts or modify the facts or minimize the facts.

Q. Judge, do you know anything of an agreement made along in September, 1899, between the rail makers in New York for the year 1900? I do not mean a new agreement bringing them together, but a new agreement in regard to the question of any of the features that were to apply in 1900?

A. I do not. There was not any.

Q. Judge, I will ask if you recall anything about it from my reading you this from the minutes of the Carnegie Steel Company, Limited, September 19, 1899, Volume III of the Government Exhibits, page 1272:

"Mr. Schwab: In line with the authority given me I met the other rail makers in New York last Wednesday. A new agreement was made for 1900, which, however, in no way invalidates the original rail agreement between the Illinois Steel Company and ourselves, so that in case the new agreement falls through for any reason, the original agreement will be operative. The price for 1900 was fixed at $33.00. The $1.00 differential between Pittsburgh and Chicago was eliminated. The Lackawanna, the Pennsylvania and the Maryland companies were taken in. The percentages agreed on, compared with those under the last 'Rail Makers' Association' agreement, were as follows:"

I will not read the fractions.

"Carnegie ..... 30% against 26%;
"Illinois ..... 30% against 26%;

"Cambria ..... 10% against 8%;
"Colorado ..... 5% against .....
"Pennsylvania and Maryland ..... 11% against 11%;
"Lackawanna ..... 13% against 19%."

This agreement seems to be another agreement, differing from the original one that had been carried on, whatever it was, between the Carnegie and the Illinois, but did not supersede it?

A. Not at all, Judge. It was not a new agreement at all. If that refers to any fact, it refers to the fact I testified to on direct examination, whereby additional companies were admitted to the arrangement and participated in the arrangement which had been made—I say companies; by that I mean presidents of companies—the arrangement which had been made between Carnegie and myself and others.

Q. At this time, September 19th, 1899, you were president of the Federal Steel Company, were you not?

A. I was.

Q. What about the price having been arranged for 1900 between the Federal and any other companies at $33?

A. No price was arranged.

Q. Do you know what the price was at which rails were sold by your company for 1900?

A. Yes.

Q. What was it?

A. I think it was $33. I think the first one to fix the price for that year was either the Cambria or the Carnegie. I am not quite certain which. Whoever fixed it first, the others followed.

Q. Cambria and Carnegie were in a way operating with you at that time, were they not?

A. In the way I have stated. In no other way.

Q. Did the Carnegie sell at $33 for 1900?

A. I think all the companies sold at that price.

Q. All of those companies—the Carnegie, the Illinois, the Cambria, the Colorado, the Pennsylvania, the Maryland and the Lackawanna?

A. I think so.

Q. I will continue reading:——

A. (Interposing) I feel quite certain, from memory, that the Cambria Steel was the one who fixed that price, and that it had been selling quite a quantity of rails before we knew that they were selling at that price. The general market had forced up the prices.

Q. I will continue:

"Under the old agreement, Pennsylvania and Maryland were to receive $100,000.00 per annum as bonus, but for next year there is no cash bonus to anyone."

Did the Federal Company participate in the paying of any bonus for the year 1899 or any part of that, or did the Illinois Company participate directly or indirectly in the payment of any bonus to the Pennsylvania and Maryland Companies?

A. I have no recollection whatever with regard to that, and I do not know what the bonus could have been paid for, if anyone paid it. Does Mr. Schwab in the minutes state who paid the bonus?

Q. No, he did not say who paid it.

A. I do not know anything about it; I have no recollection whatever about that.

Q. I proceed:

"I think this is a very favorable contract for us, especially because we go into next year with a very large amount of rails sold for this year, but which are not to be delivered until next.

"There is one very important feature of the rail situation. The reports show the Illinois Steel Company to have sold 100,000 tons more than their share. This has been sold to roads to whom the Illinois Steel Company has always sold heretofore —regular customers. These roads appear to have specified their wants for 1900 earlier than usual, thus giving Illinois that lead in tonnage. There are other roads that always buy from us, but which have not yet specified for next year. Mr. Carnegie thinks we should not let the Illinois Steel Company go so far ahead of its percentage, but I do not think it policy to fight them on this point: In view of our agreement, I think we should let them sell to the roads they have sold to

heretofore. There is some risk, but I think not very much, having the two agreements, the new one with all the makers and the old one with the Illinois Steel Company itself to fall back on in case the new one should be broken."

Now, did the Illinois, pending any agreement at that time, sell in excess of the percentage agreed upon between it and these other companies?

A. Let me say first that there was no actual, no nominal agreement between companies. I explained the other day that the presidents agreed between themselves that they would recommend to their companies certain things. However, you can treat that as to its effect. I remember the Illinois Steel did sell at times more than its percentage, and I remember distinctly of its making some transfers of tonnages to the Carnegie and to the Cambria, respectively.

Q. That was an adjustment made under whatever plans you were operating on, was it?

A. I do not think it was an adjustment, no; but I think because the Illinois Steel was ahead in its tonnages, and the Carnegie and the Cambria were complaining of that, that we did voluntarily make those transfers, and they were made because of the original agreement; no doubt about that.

Q. You say the Illinois was ahead. Ahead of what?

A. Ahead of its percentage.

MR. LINDABURY: He said ahead of its percentage.

By MR. DICKINSON:

Q. As understood between it and the other parties to the agreement, whatever it was?

A. As stated in the original paper modified by the other parties coming in, yes.

Q. Then you did have a percentage?

A. I have stated that over and over again. I stated that on direct examination. It was first 50 and 50 between the Carnegie and the Illinois Steel, and then modified by these others coming in.

Q. Did you only know about one agreement?

A. There was but one agreement, I am very sure, except in the way I have stated, by the other presidents coming into

that. Never any other. I told on direct examination exactly the facts. Mr. Osgood had prepared an agreement at one time, but I refused to sign it; it never was signed, and it was abandoned and never acted under, and I do not remember the terms of it. I think it provided for a penalty. I have that impression.

Q. Penalty for what?

A. It provided for distribution of tonnage.

Q. In what way was that penalty to operate?

A. My mind is indefinite. I cannot be more specific. Anyhow, it was not signed and was not executed, and I do not remember.

Q. I will read you from page 1274, of the minutes of October 2, 1899:

"Mr. Schwab: The Rail Makers met again last week, and concluded the arrangement outlined to the board two weeks ago, modifying it, however, so that it is to take effect October 1st, and to include all the old business from that date. We also arranged, in a manner which I think will be satisfactory to all, the question of selling in excess of the respective proportions of the different mills. The Illinois Steel Company and Colorado are to confine their sales to Chicago and the Northwest, we to have the Central West and the South, and so on with the other mills, the district being divided on the basis of actual sales made during the past. I think this will work very well."

Did the Illinois Company during the latter part of 1899, following the date that I have mentioned, enter into an agreement with these other companies by which it was understood that the Illinois Steel and the Colorado were to confine their sales to Chicago and the Northwest?

A. I have no recollection in regard to that at all. They did not make any agreement. There is no foundation for Mr. Schwab's statement, except possibly in conversation the Illinois Steel people might say, "If we are ahead in our tonnages we will try to confine our sales to certain territories in order to keep these tonnages equalized or more nearly equalized." It would be a very natural thing, and seems to have been, for the Carnegie people, if anyone had a conversation with

anybody else in which an opinion was expressed as to what probably would be done, to go home and say to their board, "We have got an agreement with so and so." From their minutes that seems to be their disposition. I have given you the exact facts.

Q. Whether there was a formal agreement in writing or not, was there an understanding arrived at in conversations which were interpreted, or understood to be interpreted, and afterwards acted upon by these several companies, to the effect that the Illinois Steel and the Colorado would confine their sales to Chicago and the Northwest?

A. I would say no, not to my knowledge or as I believe.

Q. Did you attend the meeting of the rail makers the week preceding October 2, 1899?

A. I have no recollection whatever in regard to it. I cannot say that I did or did not. I did attend some of the meetings.

Q. If you were not at that meeting then personally you do not know, of course, what took place there?

A. I am pretty confident and speak confidently, because Mr. Buffington was president of the Illinois Steel Company and generally kept me pretty well informed. He was a most reliable man, and very careful to follow instructions. That may not have been true always, but I am pretty sure it was true in those days as to the rail business.

Q. Did Mr. Buffington keep you informed as to everything that transpired at the meetings he attended from time to time during that period, as a representative of the Illinois Steel Company?

A. Are you speaking of rails or something else?

Q. Anything of that character?

A. I should say no.

Q. Well, then, it was only in regard to rails that he kept you posted?

A. Well, rails were something that I had had charge of at the beginning. I was a party to that original agreement. I knew all about that and I kept track of that. Mr. Buffington knew that. Now, if Mr. Buffington was in any way connected with any other commodity with respect to transactions of that

kind I never had anything to do with it, and I never had any knowledge in regard to it, and it was never reported to me. I am giving you the exact facts. You cannot catch me on things that are not true. I am trying to give you the truth in everything.

Q. I am not trying to catch you.

A. I did not say you were. I will not vary any from anything I believe to be the truth.

Q. I understand you to say that Mr. Buffington reported to you in regard to a rail meeting that he attended, if he did attend any, but not in regard to any other meetings. Is that what you mean to say?

A. I mean to say exactly what I said; my language is very plain.

Q. Do you know whether or not the agreement or understanding, or whatever it was, under which you have operated so far as you have spoken, applied to foreign sales or in terms was meant to apply to foreign sales?

A. I do not, but my belief is that foreign sales, generally at least, were not included. For a time they may have included Mexico and even Canada; I am not sure.

Q. The committee, then, would have had nothing to do with foreign sales, according to your understanding?

A. Well, I would consider Canadian sales and Mexican sales foreign sales.

Q. Then you mean to say the committee would have had to do with Canadian sales and Mexican sales?

A. If those countries were included, as I rather think they were, for a time at least; that is my present impression.

Q. Judge, you know what the price of rails was in the year following September 25, 1900?

A. I think $26 was the price we fixed for 1901 rails.

Q. And was that the price that all the others, the Carnegie Company, the Illinois, Cambria, Colorado and Lackawanna fixed?

A. I have no doubt it was; when I speak of a certain price like $26 or $28, I mean about that, in practical results. Prices varied to some extent and in some instances, depending upon

points of delivery, and so forth, and the net result at the end of the year might vary.

Q. I will read you what Mr. Schwab says, minutes of September 25, 1900, Volume VI, page 1893:

"Mr. Schwab: I would like to report that at the meeting of the rail manufacturers last week we agreed upon a division of the business, and practically the same conditions as existed during the past year. We have had to take in the National Steel Company, giving them ten per cent., of the rails sold, to be deducted *pro rata* from all the other members. The price of rails was fixed at $26.00 per ton."

Do you know anything about the National being taken in and about a percentage being given them, and that reducing your percentage?

Mr. Lindabury: I object to reading to the witness a speech or remark made by Mr. Schwab on some occasion when he was not present and with which he has no connection.

The Witness: I remember the circumstance; I remember that some time, perhaps that date, the president of the National Steel, without signing any paper, as I remember, had more or less conversation with Mr. Schwab, and I think some of the others, and it was arranged the National Steel should have a certain percentage. I remember that much, and that perhaps covers your inquiry. It seems to me one or more of the presidents, that is, either Stackhouse of the Cambria or Osgood of the Colorado Fuel & Iron signed his name on that original Carnegie agreement, but I am not sure. I do not think the President of the National Steel signed it or saw it.

Q. That reduced your percentage, didn't it, letting the National in?

A. Of course it would.

Q. When the National came in, Judge, what other maker of steel rails in the United States was there outside of those who were operating with you?

A. I do not think there were any others manufacturing heavy rails; there were a good many manufacturing light rails, however.

Q. But this arrangement affecting manufacturers of heavy

rails embraced all the manufacturers in the United States?

A. I think so. The Lackawanna might have been out at that particular time.

Q. Do you know any other company at that time except the Carnegie and the Illinois that had as large a percentage as was given to the National, to wit, 10 per cent.?

A. I should think larger.

Q. Which ones?

A. I should think the Pennsylvania had larger; speaking from recollection, of course.

Q. The National increased, did it not, constantly in output after that, in its sales?

A. Well, I am inclined to think it had not made any rails of any kind up to that time. I am not sure, though, about that. It had not been making rails.

Q. Would you call 81,250 tons an appreciable amount?

A. Yes. Did they make those in 1900?

Q. The sales reports by Mr. Peacock, same volume, page 1903, December 4th, 1900, show the National 81,250, and the report of Mr. Bope on page 1919 of the same volume, made March 25th, 1901, shows the sales of the National 166,302 tons.

A. Quite likely it had been making a substantial amount then.

Q. That was a substantial amount?

A. Yes.

By Mr. Dickinson:

Q. Judge, in 1900, were not the Carnegie, the Illinois and the National making a very much larger amount than all the other rail makers put together, in the United States?

A. They were.

Q. At the time the National Steel was taken over, was it not the fourth largest maker of standard rails in the United States?

A. I think it was producing the fourth largest quantity. I have heretofore stated that the National Steel had a mill in which they could make rails or other material, and they would make one or the other, depending upon the market;

and there was a very great slump in the general steel market about the middle of 1900.

Mr. Lindabury: Where do you get that from, Judge? I know you are not trying to mislead the witness, but there is something confusing here, apparently.

Mr. Colton: By referring to the percentages given on page 1273, and taking ten per cent. from each of them, you will find the ratio that each of them had. Then turn to page 1275 and you will find the percentage each rail maker had then. Subtract ten per cent. from each of them and it will show the testimony to be as Judge Gary has given it.

Mr. Lindabury: Here is your table of March 25, which shows the Lackawanna——

Mr. Dickinson: What year?

Mr. Lindabury: 1901; just a few days before it was taken over.

Mr. Colton: That refers to sales, not percentages.

Mr. Dickinson: What page?

Mr. Lindabury: Your own page, 1919. There is this statement——

Mr. Dickinson: But this is only since September 21, 1900.

Mr. Lindabury: This seems to run from September 21, 1900, to March 25, 1901.

Mr. Dickinson: This is a question of sales.

Mr. Colton: Showing how rapidly they were increasing.

Mr. Dickinson: I will let the Judge answer the question again, if he wants to answer it differently.

Mr. Lindabury: Before doing that, let us look into it a moment. We want to get the facts, you as we. This is, so far as I see, the latest thing we have; I mean, it is just a few days before it was taken over.

Mr. Colton: He ought to have his attention called to this, too, which we base it on.

Mr. Lindabury: Very well, let us do that; let us try to get it right. It will not profit anybody to get it wrong.

Mr. Colton: Turn to 1893. This is what we based our questions on. That gives the National ten per cent., and a deduction to be made from the percentage of everybody else in the association.

MR. LINDABURY: That is when the National was taken into the arrangement?

MR. COLTON: That is when the National was taken in.

MR. LINDABURY: Is that what you meant to ask about? You said taken over by the U. S. Steel Corporation, as I understood your question.

MR. COLTON: Here is what we based it on (showing page to the witness and Mr. Lindabury).

MR. LINDABURY: Your question asked about production.

MR. COLTON: Sales.

MR. LINDABURY: Well, sales. What is the difference?

By MR. DICKINSON:

Q. Judge, do you wish to answer the question again, in the light of what you have heard and seen?

A. I do not remember these at all; but I now remember the National Steel Company sold a lot of rails before it was prepared to make them; I do not know just exactly how many. Then, after it was prepared to make them, it made as many as it could, and I remember that the president went to the presidents of the railroads who served the National Steel and was very persistent in demanding large tonnage, and got a pretty good tonnage. I remember those salient facts, but that is as far as I can tell you. I do not remember any figures now.

Q. Is that all the modification you want to make of your answer?

A. I think so.

Q. All right.

A. I ought to say, perhaps, that I do not remember just when the Lackawanna Steel suspended making rails. My previous answer was given on the basis that the Lackawanna was not making rails at that particular time, but I have no way of fixing those dates now. Therefore I cannot give you much valuable information on the subject about which you are inquiring.

Q. Judge, referring to this arrangement in regard to rails, so far as you have shown yourself to be acquainted with it or participating in it: Referring to the Hoar opinion, which was introduced in evidence in connection with your testimony, I

call your attention to and read to you the following passage from it:

"This being my opinion, I think the parties to the agreement above supposed would not be likely to be convicted of an offense under the statute of last year."

This opinion was rendered, was it not, before there was any judicial determination in regard to the Sherman Act, and within a very short time after the Act was passed, was it not?

A. I should think so. I do not remember when I first saw it. I remember hearing about it, but I cannot tell you just when I heard about it, and I certainly did not see it until long after that. And I would like to add that the question of criminal prosecution never came into my mind or was ever suggested, in regard to the rail arrangement.

Q. I just call attention to the fact that he seems to intimate that they might take a chance on it, but there was no assurance about that.

MR. LINDABURY: He puts that opinion distinctly on the ground that he thought the thing would not be in violation of the statute.

MR. COLTON: He thought it would be tried out.

MR. DICKINSON: Yes, he thought it would be tried out and that they might not be convicted.

THE WITNESS: I understood that it was the opinion of Senator Hoar that the old pooling arrangements, so-called, were legal.

By MR. DICKINSON:

Q. Are you acquainted with the opinion in United States *vs.* Addyston Pipe and Steel Company and others, decided by the Circuit Court of Appeals, February 8, 1898?

A. I remember to have heard of that, when it was decided by the Supreme Court of the United States.

Q. I said by the United States Circuit Court of Appeals.

A. No, I do not think I was familiar with it then.

Q. When did you understand it was decided by the Supreme Court? You are going on to state about that?

A. It seems to me it was very much later than that; I should think about 1900 or 1901.

Q. Whenever that was, did you change your view in regard to the question of pools?

A. That had a marked impression on my mind, I admit.

Q. I call your attention to this passage in the opinion of the Circuit Court of Appeals, February 8, 1898, 85 Fed., 292.

MR. LINDABURY: One moment. He has only spoken of the decision of the Supreme Court of the United States.

MR. DICKINSON: I am speaking of this other one.

MR. LINDABURY: But you are basing it upon his statement that he was impressed.

MR. DICKINSON: It was affirmed by the Supreme Court of the United States.

MR. LINDABURY: That opinion was not affirmed by the Supreme Court of the United States, but a different opinion was given. It was the decision that was affirmed.

MR. DICKINSON: It was the case. I did not mean the opinion, of course.

MR. LINDABURY: That particular language was not affirmed, because the Supreme Court gave its own opinion.

MR. DICKINSON: My recollection is that they quoted Judge Taft's opinion with approval.

THE WITNESS: I have no information in regard to that.

By MR. DICKINSON:

Q. In that occurs the following:

"The defendants acquired this power by voluntarily agreeing to sell only at prices fixed by their committee, and by allowing the highest bidder at the secret "auction pool" to become the lowest bidder of them at the public letting. Now, the restraint thus imposed on themselves was only partial; it did not cover the United States; there was not a complete monopoly. It was tempered by the fear of competition, and it affected only a part of the price, but this certainly did not take the contract or association out of the annulling effect of the rule against monopolies. In United States *vs.* E. C. Knight Company, 156 U. S., 116; 15 Supreme Court, 255, Chief Justice Fuller, in speaking for the Court, said: 'Again, all the authorities agree that in order to vitiate a contract or combination it is not essential that its result should be a

complete monopoly. It is sufficient, if it really tends to that end, to deprive the public of the advantages which flow from the competition.' "

Now, referring to the Supreme Court opinion of which you have spoken, it was decided December 4th, 1899. Those arrangements, whatever they were, were in operation then, were they not?

A. Those what?

Q. These arrangements, as you have described them, between these companies, they were in operation then?

A. I have not said so. I am not willing to admit that.

Q. There the Supreme Court said, in this case to which I have referred, the Addyston Pipe case:

"We have no doubt that where the direct and immediate effect of the contract or combination among particular dealers in a commodity is to destroy competition between them or others, so that the parties to the contract or combination may obtain increased prices for themselves, such contract or combination amounts to a restraint of trade in the commodity. Even though contracts to buy such commodity at the enhanced prices are continually being made, total suppression of the trade in the commodity is not necessary in order to render the combination one in restraint of trade."

You were familiar with that decision, were you not?

A. I cannot say I was familiar with it. I was not practicing law, Judge.

MR. LINDABURY: Will you save my coming back to this later on rebuttal, by asking him whether he ever made a contract with any competitor after the Addyston Pipe decision? Do you mind asking him that, so that I will not have to go back to it on re-direct?

MR. DICKINSON: What?

MR. LINDABURY: Whether he ever made a contract.

MR. DICKINSON: When?

MR. LINDABURY: After the Addyston Pipe decision.

MR. DICKINSON: I will ask if he ever made any agreement fixing prices.

MR. LINDABURY: Do you mind putting it my way, whether

he ever made any agreement fixing prices with any competitor after the Addyston Pipe decision?

MR. DICKINSON: No; I will ask him whether he ever made any agreement, directly or indirectly, after that decision.

THE WITNESS: I should like to have you refer to any agreement I made after that decision, of any sort or description. I wish you would refer to it.

MR. DICKINSON: I am just asking this question.

THE WITNESS: If you claim I did, I think you ought to be fair enough to tell me, if you claim I ever made any agreement.

MR. DICKINSON: That question did not come from me; that came from your own side.

MR. LINDABURY: You will not put the question the way I ask?

MR. DICKINSON: I will put it my way.

MR. LINDABURY: Then do not say it is my question.

THE WITNESS: I think he wants to be fair to me.

MR. LINDABURY: But I do not want him to say it is my question when he will not put it in my way. It was only courtesy that I asked.

MR. DICKINSON: But I do not think you ought to interfere with my examination that way.

MR. LINDABURY: My quarrel is that you undertake to put my question and you will not put it my way. Then do not put it at all.

MR. DICKINSON: The trouble I have had in this cross examination, with so much of it, is that you put your question in such a way that it elicits an answer that involves a great deal of cross examination to delimit just exactly the effect of the answer, and that is the reason I do not want to put it in the way you put it.

MR. LINDABURY: That is the criticism you made of my brother Severance. That has been your trouble all the way through.

THE WITNESS: Public sentiment affected me on all these questions. I did my best to try to keep up to public sentiment all the time, as I understood it.

By Mr. Dickinson:

Q. Referring to the latter part of 1904, where you stated that you took up with the finance committee the subject matter of pools and agreements that from time to time had been referred to in the decisions, and to your further statement that counsel reported to you that they found some matters that they believed were not exactly right, without giving you particulars, and that an order was made to discontinue any such wrongdoing that might exist and to prevent its recurrence, I will ask you if, as a matter of fact, notwithstanding this investigation on your part and notwithstanding the steps at that time taken by you, the American Steel & Wire Company stayed in pools down into the year 1908?

A. If you will say a pool, I will answer in the affirmative. I have not understood there was more than one.

Q. Five pools then, I am asking you if they did not.

A. If they were in five pools?

Q. Don't you know whether they were in them or not?

A. I do not, because I have forgotten. I was very much disturbed by the exposure when it came out, and took steps to see that it was wiped out, that anything illegal was eradicated, and that ended it so far as I was concerned. I do not now remember that I heard of more than one pool; I do not know what that was.

Q. You spoke of taking steps——

A. (Interposing) I mean by that I instructed our general solicitor to look into the matter and if he found there was any foundation for the claim that the Wire Company was in any pool or connected with any illegality to see that it was immediately abandoned, and if he had any trouble, to let me know and I would see that discipline was enforced.

Q. That was when it was brought to your attention by some outsider coming to you?

A. Yes, that is right.

Q. But I am speaking of the period of 1904, when you gave orders to have anybody withdraw from pools if they were in any pools, and not to go in any other.

A. I put the whole matter in charge of counsel.

Q. What steps did you take between that time and down to

1908, when this exposure came in respect to the American Steel & Wire Company, about informing yourself as to whether or not any of your subordinates were in pools?

A. I do not know that I took any steps. I had not been looking for any burglars in my house, because I had not any reason to suppose there were any there.

Q. Notwithstanding, then, this order made in 1904, those who were in charge immediately of the operations of the American Steel & Wire Company did go into or continue in pools after that, did they not?

A. I suppose continued; I do not think they went into any.

Q. And you made no further investigation at all until it came to you from an outsider?

A. Not so far as I remember. I assumed that counsel had entirely disposed of the whole matter, and I have no doubt they thought so.

Q. When in 1908 this disclosure came to you and you took steps to discontinue it, do you know whether or not after that Mr. Baackes co-operated in any way effectively along lines which substantially involved some of the elements upon which these pools had operated?

A. After what date?

Q. After 1908, when you brought this matter to the attention of the solicitor.

A. After that time?

Q. Yes.

A. I do not think so.

Q. In 1904 you issued these orders and directions and found out in 1908 that they had been violated. What disciplinary steps did you take; did you discharge anybody who had been putting this American Steel & Wire Company into pools contrary to the orders that had been issued by you?

A. No.

Q. You did nothing but admonish them further?

A. I used rather emphatic language in talking to our people, but I was so thoroughly satisfied then that there would never be any possibility of danger again, because of the criminal prosecution and the fines and the disgrace, that I did not feel like recommending the discharge of a man who was de-

pendent upon his position for the support of himself and family. I was actuated by the same motives that people are ordinarily actuated by. Of course if I had found out again after that that the same man disregarded instructions the discipline would have been severe.

Q. But you were emphatic, were you not, in 1904?

A. Yes.

Q. And again in 1908?

A. Yes.

Q. When did the indictments come?

A. In 1908.

Q. No.

A. Didn't they?

Q. No; 1911.

A. Oh, yes; about two years and a half afterwards.

Q. Judge, you were asked this question:

"Q. So far as you know, have prices of any steel products been fixed by agreement between manufacturers at any time since the Steel Corporation was formed?"

"A. No."

Now, I want to call your attention to that and see if you stand by that answer?

A. I modified that on direct examination by excepting the Wire Company.

Q. Judge, you stated on page 9110, Volume 68, referring to the price of rails, as follows:

"The price of rails for all these years has practically been fixed by agreement between the manufacturers and the railroads themselves."

Do you know of any meeting at any time or place that took place where there was any general representation of railroad presidents and manufacturers of rails at which the price of rails was fixed by agreement?

A. No.

Q. Does that not refer to a previous statement made by you that the president of the Pennsylvania Railroad Company would come and get the price of rails and make an announcement, and then other railroad presidents would follow that, or does it mean something different?

A. No, in includes a good many other railroad presidents. For instance, it was not uncommon for Mr. Marvin Hughitt to come to my office and say he was going to order of the Illinois Steel Company for the following year a certain quantity of rails, and what would be our price. I would tell him and he would say it was all right and put his order in; and other presidents did the same, a good many of them.

Q. That would mean, then, that at particular times individual presidents would come in and they would come to an understanding with you as to what the price would be, but you did not mean to indicate by that that there had been any coming together of presidents and manufacturers to consider the price of rails, and that they arrived at any concensus as to what it should be?

A. I did not. It was very common for a good many railroad presidents to meet together and discuss the question of rails for the following year, and also specifications, and then for some representative of those presidents to come direct to my office from those meetings. I remember several instances where that occurred.

Q. Will you specify some particular meeting and what presidents were represented, and what representative of theirs came to you as a representative of these assembled presidents?

A. In this way: I remember Mr. Cassatt, and I remember another railroad president—I think I know who it was; I might be mistaken—but I believe it was Mr. Jeffery, coming to my office at two different times with the statement that he had just left a meeting of several railroad people and they were discussing rails, and he came in to talk about prices and specifications for the next year, and so on. I remember very distinctly the incidents.

Q. Do you mean to say by that, that these men came to you as a committee or representative of these others, coming from a meeting where the matter had been discussed, and that they then took up the discussion with you?

A. I would not put it as strong as that, nor any stronger than I have stated in my last answer.

Q. What I want to get at, Judge, is whether you meant to say by that, that there had been any assembly of railroad

presidents for the purpose of discussing the question of rails and agreeing upon a price, at which the manufacturers were present, and at such meeting the price had been agreed on?

A. No; I answer that in the negative.

Q. I was just afraid it might be interpreted otherwise. On page 9114 of the same volume the following occurs:

"Q. In this division of tonnage by railroads among the manufacturers is the same price given to each?

"A. The same price?

"Q. Yes.

"A. Yes.

"Q. Always on the same price basis?

"A. Oh, yes; the railroad company controls that business and practically fixes the price of rails."

Now, I want to ask you, Judge, whether you meant to state broadly by that, that any railroad company practically fixes the price of rails?

MR. LINDABURY: That ought to be taken in connection with what goes before it.

MR. DICKINSON: I did read what went before it.

MR. LINDABURY: I mean a little more.

MR. DICKINSON: How far back do you think I ought to read?

MR. LINDABURY: I think we had better let him see the connection. That is all (handing to the witness the volume of testimony referred to). He is speaking of the division by a railroad of its tonnage among its different——

MR. DICKINSON: I think I know what he means; I think we all know, but I think the way it is put here it is susceptible of a very different meaning. I simply want to know just what he does mean.

THE WITNESS: Taking that by itself, that may be a rather strong statement; but practically, I think it is fair and correct.

Suppose, for instance, the president of the Pennsylvania railroad should come to my office to discuss the price of rails for the next year, and should present, as is usually done, specifications which involved extra tests and different com

position, and all that sort of thing, and we should finally agree as to what the price of the rails should be. He would go home and write letters to various manufacturers of rails, in which he would say he wanted so many rails for the next year, manufactured in accordance with their printed specifications which had been prepared, that he proposed to give so much for them, and that he had placed his order with the U. S. Steel interests for that amount. He would practically dictate the price of rails to all the other manufacturers, don't you see?

By Mr. Dickinson:

Q. That is, after he found out what you would sell them to him for?

A. Well, I could carry it further——

Q. Is not that a fact, Judge?

A. That is true as to that, yes; but, as a matter of practice, in his dealings with me, the president of the Pennsylvania Railroad for a number of years has pretty nearly dictated the price. I do not want to exaggerate that at all, but I have in mind several instances where he was in my office and I tried to get a higher price, because of the extra specifications, and failed to get it. I could not get it and satisfy him. I could not get it without his leaving me with a feeling that he was obliged to pay more than he ought to pay. So I would say:

"Very well, let it go." But for the last few years I have said: "That will be all right for next year, but the following year you will have to pay a bigger price. We cannot afford to sell them at that price." By that I mean to say that the course of dealings was such that it has seemed to me for a good many years the railroads have pretty nearly dictated the price of rails.

Q. What railroad company other than the Pennsylvania Railroad Company and in the way you have explained did you mean, if any, to embrace in this answer which I have read to you, as follows:

"A. Oh, yes, the railroad company controls that business and practically fixes the price of rails."

A. The Pennsylvania Railroad and the New York Cen-

tral Railroad Companies have been the leaders. In their transaction of business with manufacturers they have largely represented the railroads and they have been the leaders. When they established or secured a price, that secured the same prices, of course, for other railroad companies. Many, many times the presidents of those railroads have been to my office assuming to represent the railroads generally concerning rates. I remember on one or two occasions going back a good many years, a number of railroad presidents, perhaps a dozen at a time, have been in my office and said that the rates would be so and so in some particular locality.

Q. The rates?

A. The rates.

Q. You mean railroad rates?

A. Railroad rates, I mean. But the last few years, generally, the presidents of the Pennsylvania and the New York Central have assumed to represent the railroads in discussing these questions. Latterly, in the last year or so, the president of the Baltimore & Ohio has been perhaps more representative of the railroads.

Q. Judge, do you mean to say that any of the railroad companies, if so, what companies, have delegated the president of the Pennsylvania Railroad Company or the New York Central, or both of them, to come to you as the representative of these other railroad companies for the purpose of fixing the price of rails? If so, state what companies they represented, and give the dates and times of these meetings?

A. I do no want to state it any further or any more strongly than I have already stated it. I have tried to give you the circumstances accurately as they occurred, and have given you my inference from those circumstances. I have not been present at the railroad meetings, and cannot tell you what occurred.

Q. Do you know of any railroad companies that authorized either of these parties to come to you and represent such railroad companies in the matter of fixing the price of rails?

A. No; but I believe a good many railroad presidents have said to the presidents of those railroads: "When you fix the

prices, or when you secure such and such results by conference, we will adopt your views and your conclusions."

I have no doubt that is true, from the way the business was done. Railroads are very competent to take care of themselves, and railroad presidents have been without exception very severe, or at least very stubborn, I will put it that way, in their dealings with us.

Q. Have you any knowledge of any railroad companies authorizing either the president of the New York Central or the Pennsylvania Railroad to come to you and represent such railroad companies in the mater of fixing the price of rails? If so, name the companies and the times when those gentlemen came to you?

A. Answering your question categorically, I will say no.

Q. Now, referring to such matters as took place between you and Mr. Cassatt, where you say he did come to you, when is the first time that such an occurrence took place, what year?

A. Certainly 1899, as early as 1899.

Q. That was before the formation of the Corporation?

A. Yes.

Q. Well, after the formation of the Corporation what years did he come to you?

A. I cannot tell you, but I should think every year until he died.

Q. Wasn't that for the purpose of taking up the question of special specifications of rails for that road and getting a price on them?

A. Well, I would say largely, yes, but nevertheless it was a very common thing for him to say, "What will the price be," and when I told him, "Very satisfactory," I consider that at least fixing the price to his satisfaction.

Q. This price of rails with special specifications was based, was it not, on the price of standard Bessemer rails of $28 a ton, with the added cost involved in whatever those specifications might call for, was it not?

A. It was, more or less.

Q. You have spoken of the matters of publicity, and the way in which you took the public into your confidence through newspapers and otherwise. I will ask you whether or not it

was your custom to give to the trade journals announcements of prices at which you were going to sell?

A. No.

Q. Did you do it at times?

A. No; I do not remember to have ever given any prices to any of the trade journals at any time. The United States Steel Corporation has not been in the habit of publishing prices, publishing price lists; I do not think the subsidiary companies have, certainly not many, if any of them, but prices have been what I call published by information given more or less to trade journals and others, and more freely by our selling companies to the trade by way of circular letters.

Q. I do not mean whether you gave out prices of all articles manufactured by the United States Steel Corporation, but I would like to call your attention to this thought, whether or not from time to time you would not give to the representatives of those trade journals, when they called on you, statements as to the prices that would obtain in respect of some larger commodities?

A. I do not remember to have ever done that with any of the trade journals. If you call my attention to it, I can perhaps tell, but to representatives of the press sometimes I may have said, and probably have, that the price of such a commodity would be so and so. I have been pretty frank with the newspapers generally, up to a comparatively recent period, and I stated the other day why I have not been quite so frank, on account of this suit.

Q. At the time of frankness to which you referred, didn't you from time to time communicate such information, following some of these dinners or following some meetings that had taken place?

A. Never to my recollection. I see no occasion for it, and I would be very glad if you would call my attention to it. I am sure I never did it.

Q. If I have any details, I will call your attention to it.

A. I would be very glad to see it; I am very sure I never did.

(Whereupon a recess was taken until two o'clock p. m.)

AFTER RECESS.

ELBERT H. GARY,

the witness under examination at the taking of recess, resumed the stand.

CROSS EXAMINATION (Continued),

By Mr. Dickinson:

Q. Judge Gary, I want to call your attention to the question of a plate pool, and ask you whether or not you recall your attendance at a meeting in New York, and I am going to mention some circumstances to see if they refresh your recollection and see if you recall that; that is, whether or not there was a meeting for the purpose of forming a plate pool at which you were present and in which you contended for an allotment of 15 per cent. of the whole for the Illinois Steel Company, and Mr. Schwab opposed that on the ground that he did not believe that the Illinois Steel Company was entitled to that much, and that following this difference of opinion there was an adjournment. Do you recall anything about that, or such a circumstance as that?

A. I have no recollection of those circumstances. I remember attending one meeting with Mr. Buffington. I think I referred to that on direct examination.

Q. Do you recall any meeting at which there was a difference between you and Mr. Schwab as to what percentage should be allowed the Illinois Steel and whether that caused an adjournment; do you have any recollection of that at all?

A. I have not.

Q. But you did attend a meeting in New York at which Mr. Buffington was with you, did you?

A. I did attend one meeting.

Q. And was one of the head mill men of the Illinois Steel Company, besides Mr. Buffington, with you?

A. I have no recollection. What is his name?

Q. I don't know.

A. I do not think so, Judge.

Q. I don't know his name.

A. I have no recollection, Judge, of any other representative from the Illinois Steel being there.

MR. LINDABURY: You do not mean to suggest to the Judge that Mr. Schwab said that on the minutes or elsewhere?

MR. DICKINSON: I have not made any suggestion. I am just mentioning certain things to see if that recalls anything to his memory.

THE WITNESS: I am giving you my best recollection now.

By MR. DICKINSON:

Q. But you say you only recollect attending one meeting?

A. That is all.

Q. And you do not know whether that is the first meeting or the second meeting of those who eventually formed this association?

A. I do not, but I think it was the first, or that I believed then it was the first.

Q. Do you recall that at any meeting where you were that you and Mr. Schwab got into a discussion as to what percentage should be allowed the Illinois Steel, and that Mr. Schwab undertook to indicate a knowledge upon his part as to what either the capacity was or the production of the Illinois Company had been, and that as a result of any such controversy the Illinois Steel obtained, instead of fifteen per cent. that it was contending for, if it was contending for that, an allotment of eleven per cent. in the association?

A. No, I remember no such circumstances; no recollection of ever having heard of anything of the kind.

Q. Do you know what allotment the Illinois Steel did get in the association that was formed?

A. I do not. I did not know when it was formed or that they got an allotment. I have no recollection of knowing anything about it or having heard anything about it.

Q. After attending the meeting that you say you did attend did you make any inquiry as to the outcome of it, and whether or not the Illinois, following that meeting, became a party to any plate association?

A. No. The last I remember about it Mr. Buffington spoke to me about it, and I told him to have nothing to do with it.

Q. And whether he did have anything to do with it after that you do not know?

A. I do not know. I have no recollection whatever of having heard of it after that.

Q. What position did Mr. Buffington hold?

A. President of the Illinois Steel Company.

Q. And you were president of the Federal?

A. The Federal, which owned the stock of the Illinois Steel.

Q. Now, at the meeting that you do recall being present at state who were there, Judge.

A. I do not remember. I remember Mr. Schwab being there.

Q. You say Mr. Schwab was there?

A. Yes, I remember seeing him.

Q. You said that Mr. Buffington was at that meeting?

A. Yes.

Q. Was Mr. Worth there?

A. I think he was; it seems to me he was.

Q. And anyone else that you can now recall?

A. There were others.

Q. Was Mr. Huston there?

A. I have no recollection.

Q. Judge, at that time, as a part of the interest which you had in the iron and steel business, being the head of one of the large concerns, were you generally acquainted with the current information in the trade journals in regard to things affecting such products as were made by the Federal Steel and its constituents?

A. No, I do not think I was at that time. I had never known anything about the business prior to my coming here, and I did not pay any attention to the trade journals for a long time. I am sure I did not read them.

Q. When did you begin to pay attention to them?

A. It seems to me I began to read the Iron Age more or less about the time the Steel Corporation was formed.

Q. How about the Iron Trade Review?

A. That was some time afterward; I do not know whether it was in existence then. Perhaps you know.

Q. No, I do not know when it began. When it was in existence, did you read that also?

A. To some extent, yes. I cannot say I did not read them, but not regularly, and probably very seldom, unless my attention was called to some particular thing by someone else.

MR. DICKINSON: I will offer in evidence from the Iron Trade Review of July 14, 1904, page 27, the following, Judge, with the view of asking you some things in regard to it, and I will read——

MR. LINDABURY: I object, on the ground that it is hearsay and because it does not appear the witness ever saw it before.

By MR. DICKINSON:

Q. The date is July 14, 1904: (Reading):

"As anticipated, prevailing prices were reaffirmed at the various Steel Association meetings held in New York last week. Meetings of the Billet, Rail, Plate, Structural and Bar Associations were held, and after prices were reaffirmed by the billet manufacturers, similar action was taken all along the line. As a result of the billet meeting there will be less cutting in the trade than there has been in the past, several interests that led in making low prices having agreed to maintain quotations in the future. However, a number of independent manufacturers are still outside of the association, and quotations from $1.50 to $2.00 below reaffirmed prices continue to be made. It was also decided to appoint a committee to investigate charges of cutting, several of the other associations already having such committees. It is thought doubtful now if lower prices of billets by association mills will prevail the remainder of the year."

Do you know anything about the prices of billets as of that time, the standard of prices?

A. I have no recollection. I would be in Europe at that time—I go to Europe every summer—I think, and I would not have been very familiar with prices during that period, and I am surprised by that article. I am sure I never heard of it before.

Q. What time do you usually return from Europe?

A. About the first of October.

Q. I will put in evidence from the Iron Trade Review of December 22, 1904, page 35, as follows:

"Advances in shapes, plates and steel bars were made at association meeting held this week, but the reaffirmation of the billet schedule was unexpected.

"The billet and beam meetings were held on Monday, and the plate and steel bar associations met yesterday. The billet manufacturers decided to reaffirm the prevailing schedule, despite the fact that steel for shipment within the next two months commands premiums from $1 to $3 a ton. It is doubtful now if any change in the present prices will be made through the present upward movement, the market being in position to sustain itself. Furthermore, the association can be sustained to better advantage with billets on this lower basis than if the regular spread between steel and pig iron were to be maintained in the official quotations. Nor is this action without precedent. An official price of $19.75 was maintained throughout the last boom, although actual sales were made above $30. The annual meeting of the association was also held, and it was decided to continue the present agreement for another year. The advance of $2 on structural shapes is considered conservative, and indicates the caution that is being exercised by the steel manufacturers to prevent the market from soaring too high. Yesterday the steel bar and plate associations met, plates being advanced $2, Bessemer bars $2, and open-hearth bars $1. A slight change was made in the plate schedule, widths from 6¼ in. to 14 in., inclusive, instead of 6¼ in. to 24 in. commanding a price of $2 less than the greater widths. The leading producer of bar iron has also made an advance of $1 a ton, and muck iron has advanced the same amount."

Do you know anything about that article?

MR. LINDABURY: You offer that in evidence?

MR. DICKINSON: Yes.

MR. LINDABURY: I object to the offer on the ground it is hearsay, first; second, that it does not appear that at that date the Steel Corporation subsidiaries had any connection with any of those pools; and upon the third ground that it

does not appear that the attention of the witness was ever called to this article.

THE WITNESS: I never heard of it before.

By MR. DICKINSON:

Q. Your reading and keeping in touch with the trade in the position that you had, did not bring that article, so far as you recollect, to your attention?

A. No. Judge, I have tried to be pretty specific in regard to my connection with the business of the Corporation generally. I did not ordinarily have anything to do with the sales of our articles; and when I did, and what I had to do, I have testified to in this case. I would not have read such an article as that, however, in those days. I was not interested in the particular subject. That was in other hands. I had other questions to look after. Of course, if a question of policy was involved at any time, then my attention would be called to it, and my authority sought, and I would consider it and pass upon it.

Q. Judge, in 1904 would not such matters as are treated of in there very nearly concern the Steel Corporation? That is to say as to whether there was an association or associations, either to which it was a party or was not a party, and whether or not prices were advanced, and whether or not they were fixed, either by your companies or by some competitors of theirs who were in the associations? That would nearly touch you, would it not?

A. Yes; if there were associations and my attention was called to them, then I would become interested immediately at that time, I should say.

MR. DICKINSON: In the same line I offer in evidence excerpt from the Iron Trade Review of August 25, 1904. I suppose that, however, would cover a time when you were abroad, if you were abroad that year, Judge. Do you remember whether you were abroad that summer?

THE WITNESS: Yes.

MR. DICKINSON: Still I will offer this in evidence.

MR. LINDABURY: On general principles, Judge, I suppose.

MR. DICKINSON: Yes. (Reading):

"Important Steel Conference in New York. Excerpt from Iron Trade Review, August 25, 1904. Special telegram. New York, August 24. An important conference was held here yesterday in which matters relating to steel pool agreements were discussed. Among those present were President Corey of the United States Steel Corporation, Acting President Moses Taylor of the Lackawanna Steel Company and Vice-President Willis L. King of the Jones & Laughlin Steel Company. While none of the conferees would discuss the meeting, it can be stated on authority that it developed a unanimous opinion that the continued existence of all the pools in finished materials was for the best interests of the iron and steel trade. To this end it was said that the Lackawanna Steel Company will either join the structural pool, and later the plate pool, or make the prices of the latter the basis of its sales. Prices of finished materials were thoroughly considered, but no definite agreement was arrived at. The conference is reported to be preliminary to several more to be held later, on conditions in the structural shape plate and bar associations. Published reports that the billet pool will hold a meeting in this city today cannot be verified."

MR. LINDABURY: Objected to as hearsay, and because the attention of the witness has never been called to it before. In so far as appears he never saw it.

By MR. DICKINSON:

Q. Judge, I will call your attention to an article in the Iron Age of January 12, 1905, page 191: "Rails. The Rail Association for 1905, which includes the seven leading producers, is now on a strong basis, the Lackawanna Company receiving its allotment of fifteen per cent."

Do you know affirmatively whether any of your subsidiaries were in that pool or arrangement?

MR. LINDABURY: Judge, you offer a thing of that kind in evidence without giving me an opportunity to object before you ask a question.

MR. DICKINSON: I was just eager to get along. I beg your pardon.

MR. LINDABURY: I object to the admission of that in evidence on the same ground, namely that it is hearsay, and that

the attention of the witness is not shown to have ever been called to it.

THE WITNESS: I will answer your question in the negative I do not know anything about it.

By MR. DICKINSON:

Q. Either affirmatively or negatively?

A. No; I am surprised by the article. I do not believe there is any justification for it; I have reasons for believing that.

Q. You believed that was all smoke, did you not?

A. I have heard so much about the association in your questions. I think there is a good deal of smoke published.

Q. I will read this excerpt from the Iron Trade Review, April 6, 1905, page 82:

"Billet and plate prices reaffirmed, special telegram.

"Pittsburgh, April 5.

"Meetings of the Plate and Billet Association were held in New York yesterday and today, but no changes in the existing schedules were made. While the association price of billets is $21, Pittsburgh, for both Bessemer and open-hearth, premiums of four to five dollars are being paid for prompt delivery. Under these circumstances the association mills have decided that no price changes are necessary. The plate manufacturers' agreement to maintain plates on the present basis means that if higher prices are to be paid by consumers in the near future they will be in the nature of premiums. No meeting of the Structural Association was held. The Billet Association is today stronger than it has been for several years, and since the new schedule became effective no business has been closed below this basis by any of the mills. While numerous reports had it that the price was shaded on the recent Pittsburgh Steel Company purchase, we have it on the highest authority that the price was $23 delivered. The present members of the Billet Association are as follows: Illinois Steel Company, Lackawanna Steel Company, Cambria Steel Company, Diamond State Steel Company, Carnegie Steel Company, Lorain Steel Company, Wheeling Steel & Iron Company, Republic Iron & Steel Company, Pennsylvania

Steel Company, Jones & Laughlin Steel Company, Sharon Steel Hoop Company, Otis Steel Company, La Belle Iron Works, Portsmouth Steel Company and the Allegheny Steel & Iron Company. The only important billet producers outside of the association are the Ashland Steel Company, the Tennessee Coal, Iron & Railroad Company and the Colorado Fuel & Iron Company. A meeting of the cotton tie manufacturers will probably be held this week to decide on the price for the coming year."

THE WITNESS: I was going to ask you, if I might, what you are reading from?

By MR. DICKINSON:

Q. I am reading from the Iron Trade Review of April 6, 1905.

A. May I see it?

Q. We will have to send and get the original. This is subject to comparison whenever it is called for. I will let you see what I am reading from. (Hands paper to witness.)

THE WITNESS: I am not disputing it at all, but I am surprised at these articles, that is all, and I should like to see one.

MR. LINDABURY: I object to the admission of that article in evidence on the ground that it is hearsay; upon the further ground that the attention of the witness has never been before called to it, and upon the third ground that it is opposed by all the evidence that the Government has put in on the subject.

THE WITNESS: I am curious to see one of the magazines to see just how the articles are placed.

By MR. DICKINSON:

Q. A publication of that sort in the paper, of that character, stating that the subordinate companies of the United States Steel Corporation, such as the Illinois Steel Company, the Carnegie and the Lorain were members of it, would be a matter of interest, would it not?

A. Yes, it would be interesting to me if my attention had been called to it, and I should think it would have been inter-

esting to the Government of the United States, too. I am surprised that it did not see it.

Q. You know the Government is like the mills of the gods, that grind slowly, but when it starts it grinds exceeding small.

A. Sometimes they grind the just and the unjust, I suppose.

Q. That may be the effect of bad company.

A. How late have you got one of those articles?

Q. I do not know whether we have anything later than this year.

A. Of course, after having known of the testimony in this case and having heard Mr. Schwab testify here, that they were in favor of pools and that they were kept from me, I am not as much surprised as I otherwise would be, but I am surprised that as late as that there would be meetings of that kind and associations of that kind, published in the Iron Trade Review.

Q. In reply to that inquiry, the latest I can put my hand on now, I will read, from the Iron Trade Review of September 7, 1905, page 2:

"Pittsburgh, advances in structural material.

"Heavy business in plates and shapes advanced in price; structural iron during the past week has been the only real live event, and this on account of its suddenness and unexpectedness came as a surprise, although conditions for a long time past have warranted increase, had makers cared to make announcement, and parties to the agreement are now in position, and books are open, to contract for specifications at new price, April 1, 1906, but sellers will not guarantee shipments, as things stand. At the present time there will be a large tonnage carried over into next year on existing contracts."

MR. LINDABURY: Objected to on the ground of hearsay.

MR. DICKINSON: That is the latest one I can find in reply to the question.

MR. LINDABURY: That seems to be quite attenuated.

MR. DICKINSON: I quite agree with you.

By MR. DICKINSON:

Q. If you were not personally present, do you know officially, from information given to you, anything about the billet pool in 1903, to which the Carnegie was a party?

A. I do not.

Q. I will read you from Government Exhibit No. 162, an agreement made and entered into this first day of July, 1903, by and between Carnegie Steel Company, hereinafter called the Sellers, and the Pittsburgh Steel Company, hereinafter called the Buyers, Government Exhibits, Volume IV, page 1486, as follows:

"(1) The prices to be paid under this agreement for such billets shall be fixed at the end of each month for the deliveries of that month, and shall be determined by deducting two dollars ($2.00) per gross ton from the ruling price at which billets have been sold during that month by the Steel Billet Association, or any member thereof, so long as said association continues in existence, which price shall in no case exceed twenty-five ($25.00) dollars per gross ton for billets delivered f. o. b. Buyers' works at Monessen and Glassport, Pa., during the term of this contract; and if such Steel Billet Association shall become dissolved then the price to be paid hereunder by the Buyers shall not exceed the lowest price at which the Sellers have delivered billets during such month to others."

Here is a contract of one of your subsidiaries, July, 1903, where the price is based upon a price to be fixed by the Billet Association. Did that come to your attention or knowledge in any way?

A. No.

Q. I will read you from a meeting of the finance committee of the United States Steel Corporation, held at the office of the Corporation in the city of New York on Tuesday, July 11, 1905, at 2 o'clock p. m. That is in Volume VI of Exhibits, page 1970:

"Present: Messrs. Perkins (in the chair), Gary, Bacon, Ream, Rogers and Widener.

* * * * * * * * * *

"The Chairman of the Board reported that the question of

INCREASING THE PRICES OF STRUCTURAL STEEL

had been under consideration by the different manufacturers, and that he had recommended that action be postponed.

"On motion the recommendation was approved.

"On motion, duly seconded, the meeting adjourned."

What manufacturers were there referred to? You notice that this is in the minutes of the finance committee and not the executive committee.

A. I do not know; I have no recollection whatever.

Q. This report was made by the chairman of the board; that was you?

A. Yes; I did not go to Europe that year. That was the only year for a good many years.

Q. To what manufacturers did you refer when you stated that the question of increasing the price of structural steel had been under consideration?

A. I suppose it must have referred to our own manufacturers, different subsidiary companies.

Q. And not to any other concerns?

A. Certainly not.

Q. You refer to your subsidiary companies by the term "different manufacturers?"

A. I must have done so. I do not know how that happened to be written that way, how that language happened to be employed; but certainly that is what it must have referred to, the different subsidiary companies. You see, Judge Dickinson, it is stated that he had recommended that action be postponed. That was the language always used in stating a policy or action to our subsidiary companies; we would recommend to them always to do or not to do a certain thing.

Q. That language was not copyrighted, was it, as applied to them, to mean them exclusively, was it?

A. No, it was not copyrighted, but to my mind that is very good evidence that the statement refers to the subsidiary companies.

Q. That was on July 11, 1905. I will offer in evidence from the Iron Trade Review, July 27, 1905, page 3, the following——

MR. LINDABURY: Objected to as hearsay, and as never having been brought to the attention of the witness, so far as appears.

By Mr. Dickinson:

Q. (Reading): "Structural material.

"At a meeting of the shape manufacturers in New York last week prevailing prices were reaffirmed, and the large producers have further agreed not to ask premiums of consumers. One mill outside of the association this week secured a premium of $3 on light angles for prompt delivery; and Eastern mills are likewise not exacting premiums. The American Bridge now has more unfilled orders on its books than at any time in its history, amounting to over 500,000 tons."

Now, do you know what the prices were July 11, 1905?

A. I have no present recollection on the subject.

Q. And what they were at the time of this article of July 27, 1905?

A. I have no present recollection.

Q. Do you know anything about prices being reaffirmed and remaining constant during that period?

A. No, I have no recollection on the subject. It would be perfectly natural for me if we had that tonnage and the demand was so great that our people were asking for an opinion from us in regard to the policy of advancing prices for me to recommend to them that the advances be postponed. I do know because of having stated it here what my position generally was with reference to this. I do not think I ever favored taking advantage of a heavy demand for materials to advance prices unreasonably.

Q. You do not know what became of the prices, whether they were advanced or not, after that time?

A. No, I do not. I have no recollection on the subject.

Mr. Dickinson: I offer in evidence from the Iron Trade Review of September 7th, 1905, page 2, the following:——

Mr. Lindabury: Objected to on the ground that it is hearsay. It is further objected to on the ground that it never appears to have been brought to the attention of the witness.

Q. "The advance in prices of structural iron during the past week has been the only real live event, and this on account of its suddenness and unexpectedness came as a sur-

prise, although conditions for a long time past have warranted the increase, had the makers cared to make the announcement. The parties to the agreement are now in position and books are open to contract for specifications at the new price to April 1, 1906, but sellers will not guarantee shipment. As things stand at the present time, there will be a large tonnage carried over into next year on existing contracts."

Do you know anything about the advance in structural material?

A. I have no present recollection.

Q. Would an announcement of that sort in the Iron Trade Review of September 7th, 1905, be of sufficient interest to you, occupying the position you did, to challenge your attention and interest?

A. I have no doubt it would. You see by the meeting of July 11th, 1905, I was interested in the subject matter, and I was opposed to that advance. Of course I would be interested in a question of that kind if my attention was called to it.

MR. DICKINSON: I will offer in evidence from the Iron Age, April 26, 1906, page 1422, and will read the following:——

MR. LINDABURY: I except on the same ground that I have been excepting.

By MR. DICKINSON:

Q. (Reading):

"Prices on plates were reaffirmed at the meeting of manufacturers held in New York last week."

Do you know anything about that?

A. I do not.

Q. Judge Gary, I will read you from page 5492 of the official report I have of the Tariff Hearings of the 60th Congress, the same volume we have heretofore referred to, and read the following:——

MR. LINDABURY: Upon what ground do you assume that is the official report?

MR. DICKINSON: Because it is from the Government Print-

ing Office. I will strike out the word "official" and say issued by the Government Printing Office.

By Mr. DICKINSON:

Q. (Reading):

"Mr. Clark: Suppose this case; suppose you did conclude, for any reason, no difference what, to mark yours up to $30, and one of these independent concerns thought it had a good opportunity to make money and it held its at $28 or marked them down to $27, have you not such a hold on the American market that you could immediately mark yours down to $20 or $25 long enough to put that fellow clear out of business, and then mark yours up again to where you wanted it?

"Mr. Gary: Quite likely; that may be true. I will not say that is not true. I will not say that in the competition we could not drive a good many of our competitors out of business.

"Mr. Clark: Now, another thing.

"Mr. Gary: It is not because of our hold on the market.

"Mr. Clark: What is it, then?

"Mr. Gary: It is because of our ability to produce cheaper, and because of our ownership in the independent concerns, such as the railroads, the steamship lines, and so forth, which gives a large credit from the United States Steel Corporation's standpoint."

Did you give that testimony?

A. I think I did. That in substance. I know I believed at that time that we were strong enough to drive some of our competitors out of business if we had that disposition.

Q. You believed the statements to be true as you gave them there?

A. I intended to state the truth.

Q. Judge, the previous questions to the one I am going to call you attention to here on page 5497 had been referring to the cost of property. I give you that so as to give you the connection without going back too far. It was something about costs.

"Mr. Clark: He did not know?"

Referring to you.

"Mr. Gary: Of course he did not know. I do not know.

"Mr. Clark: You do not know?

"Mr. Gary: I do not know. I know, so far as the mills and railroads and all the physical properties are concerned, what it would cost to reproduce them, of course.

"Mr. Clark: Yes; and what other cost is there besides the mines?

"Mr. Gary: The raw products are a very important item. We have an immense tonnage of raw products to make of the very best kind.

"Mr. Clark: Of course.

"Mr. Gary: They could not be reproduced at any price, but they have a value based on the cost to us of some properties in cases where we have had opportunities to buy."

Do you recall that?

A. I think I testified to that.

MR. LINDABURY: In that language? Do you remember the language, Judge?

THE WITNESS: Of course I do not remember the language at all.

MR. DICKINSON: Are the statements recorded there correct?

MR. LINDABURY: (Reading):

"An immense tonnage of raw products to make!" No man of the sense of Judge Gary would ever have used that language.

By MR. DICKINSON:

Q. Allowing for any grammatical errors——

MR. LINDABURY: I do not mind his statement that he testified generally——

MR. DICKINSON: I am speaking of the facts, Judge, not so much the niceties of expression.

THE WITNESS: Of course I do not remember the language. I could not, at this date; but I presume I expressed that idea.

By MR. DICKINSON:

Q. And the facts involved in the language used?

A. Presumably.

MR. LINDABURY: What is that?

MR. DICKINSON: And the facts.

MR. LINDABURY: (Reading):

"We have an immense tonnage of raw products to make!"

MR. DICKINSON: I will take it up with the Judge and ask more in detail, then.

By MR. DICKINSON:

Q. Did you know the cost so far as the mills and railroads and all the physical properties were concerned, what it would cost to reproduce them?

A. I thought I did at that time. I had been making pretty careful inquiry.

Q. Were their raw products a very important item?

A. Yes.

Q. Did you have an immense tonnage of raw products?

A. Yes.

Q. Of the very best kind?

A. Yes, sir.

Q. Could they have been reproduced then at any price, so far as you then knew?

A. No; I did not think then we could have reproduced the tonnage we had with the same kind of ore—that quantity and quality and in that location.

Q. Judge Gary, do you know Mr. John A. Penton?

A. Yes.

Q. Did you know him to be the managing editor of the Iron Trade Review?

A. I knew he was connected with that paper.

Q. Did he represent his paper at the Gary dinners?

A. He was present at many of them. I will not say many of them—there were not many of them—but he was present at several of them.

Q. Do you recall whether he was present at the first Gary dinner which occurred November 20, 1907?

A. I think he was. I am not certain.

Q. Did you notice any account which appeared in the papers of that dinner?

A. No.

Q. Was your attention not called to what appeared in the Iron Trade Review with regard to that dinner?

A. No.

Q. State whether or not just previous to June 11, 1908, any announcement was made by you, or whether you gave any information to a representative of the Iron Trade Review or of the press, in regard to the meeting of manufacturers which took place just preceding that time?

A. I do not remember.

Q. I will read to you from Volume 4, Government Exhibits, page 1481, as follows:

"Announced by Judge Gary after meeting of manufacturers.

(Special Telegram.)

"New York, June 10th.—After the meeting of the steel manufacturers last night, Judge Gary issued the following statement:

"The representatives of the leading steel manufacturing companies have been in session during the day. It is understood that the price of iron ore has been or will soon be reduced 50 cents per ton base. Each one of the steel manufacturers expressed the opinion that there should be a readjustment in the prices of the respective commodities, as follows:

"Billets, from $28 per ton to $25, Pittsburgh; sheet bars from $29 per ton to $27, Pittsburgh; plates from $1.70 per 100 pounds to $1.60, Pittsburgh; structural iron, from $1.70 per 100 pounds to $1.60, Pittsburgh; merchant pipe, a reduction of two points or $4 per ton, Pittsburgh; wire nails from $2.05 per 100 pounds to $1.95. Sheet and tin plates were reduced early in the year, therefore no changes were considered in the prices of these products. It is hoped these changes will not necessitate a general or radical readjustment of wages, which it is desirous to avoid."

Do you have any recollection of giving out to representatives of the press statements of fact in substance like those there published?

MR. LINDABURY: Judge, did you mention the year? I did not hear it.

MR. DICKINSON: Yes; I said June 11, 1908. You will find back in the index the dates corresponding to each one of these publications.

MR. LINDABURY: Judge, if you will permit, I think it is only fair to the witness that he should look at the announcements. I think he has a copy in print of such announcements as he did make following these meetings, and I think he ought to have an opportunity to compare them with this print.

MR. DICKINSON: I do not object to it.

MR. LINDABURY: No. I wonder where they are.

MR. DICKINSON: But I am asking him now for his memory.

MR. LINDABURY: He perhaps does not remember whether that is accurate or not; but he has one that he knows is accurate.

MR. DICKINSON: We have not seen those. I did not know he had them.

THE WITNESS: I have no recollection. I do not think that was given out by me, although it may have been given out in my name. I do not know about that. I remember a meeting at which there was some discussion concerning the reduction of prices for iron ore for that year. We were not interested in the sale of iron ore in any way, but I remember being present at the meeting more or less, and urging the iron ore people to reduce the prices of iron ore. That much I remember. I have no recollection in regard to steel prices, and I have no recollection of personally giving out any statement or making any announcement.

Q. How about prices? Were they as stated there, and did the reduction follow as shown there?

A. I cannot answer that. I do not remember; I never had anything to do with taking up prices and adjusting them one way or the other, for our company, or in any way except as I have stated at our finance committee meetings, where we would be asked for advice concerning some particular product.

Q. Did not announcements follow each one of those meetings?

A. Yes; I made announcements, and I have copies of them, but I am very sure no list of prices was mentioned in them,

no specific prices. We never discussed specific prices, so far as I know, of steel.

Q. You say you made announcements following what occasions?

A. Whatever meeting we may have had.

Q. You are not confining yourself to dinners, are you?

A. It seems to me there was one meeting which was not a dinner, and that preceded an announcement I gave to the papers in February, 1909.

MR. DICKINSON: You can put these announcements all in evidence, if you want to; of course we will except to that.

MR. LINDABURY: That is another question, Judge.

MR. DICKINSON: I have not seen them.

MR. LINDABURY: That is all right, but here is a list of the announcements; there was none at that time. There was one May 21, 1908.

MR. DICKINSON: You are not putting in your evidence now. I am putting in mine.

THE WITNESS: If that announcement was made by anyone it would be natural to give it to my secretary and ask him to give it to the members of the press who called at my office; they could tell better than I probably whether they got that from me. I doubt it very much.

By MR. DICKINSON:

Q. My attention has been called to an announcement made by you; while it is not of the same date as the one to which I called your attention, I will read it and ask you if you made this announcement:

"Statement to the press concerning meeting of committees and dinner, May 21st, 1908:

"At the meeting today of representatives of the principal manufacturers of steel in this country the opinion was expressed by each one present that the prices of steel are reasonable and should not be reduced; that reduced prices would not increase purchases, and that most of their customers do not expect or desire any changes. The opinion was unanimous that the meetings should be discontinued for the sum-

mer months unless the chairman should deem it advisable to meet at any time for reasons which do not now appear."

Did you make that announcement?

A. I think I did.

Q. Did that follow one of these dinners?

A. I think it did follow a meeting; I am not sure whether it followed a dinner.

Q. What proportion of the iron manufacturers were at that dinner, Judge?

A. I do not remember now; I have no recollection. I am sorry we did not have a full record.

Q. It was a very large percentage, wasn't it, something like 90 per cent. of the iron and steel makers of the country?

A. No, not as large a percentage at that time, no; but a large percentage I would say, yes.

Q. A large percentage?

A. A large percentage.

Q. It states that most of their customers do not expect or desire any changes. What percentage of their customers were at that dinner?

A. Well, compared to the whole, I should say a small percentage, although there were a good many there. No customer, so far as I know, ever suggested he would like to be present at one of those dinners without being invited.

Q. I suppose a good many of them were modest men and they would not suggest being invited to a dinner, would they?

A. I don't know about that; they were not so modest as that; they were fair minded men.

Q. Now, Judge, in this connection I will call your attention to an article in the Iron Age, June 1, 1911, page 1296, headed "Steel Prices Reduced." (Reading:)

"The United States Steel Corporation, with its subsidiaries and practically all of the independent steel manufacturers of the country, decided on Monday, says the New York *Times*, to meet the cut in prices made last week by the Republic Iron & Steel Company. The chief product of the Republic Company is bars, and its reduction on that line was met last week by several of the subsidiaries and independents individually, including the Carnegie Steel Company. The

trade was allowed to understand that this reduction from $1.40 per 100 lb. to $1.25 would be met in taking orders, but Monday's action went beyond that of the Republic Company by including other products than bars in the cut. It did not, however, affect rails, wire or tin plate.

"It was at a conference at the Metropolitan Club, New York, that the decision to make this general reduction was reached. A luncheon given by Judge Elbert H. Gary, chairman of the United States Steel Corporation, began there at 1.30 and concluded at 5.30. It was attended by between 50 and 60 steel manufacturers. Judge Gary announced the result of the meeting as follows:

"Representatives of the leading manufacturers of finished steel (except the Republic) met at luncheon at the Metropolitan Club to-day and existing conditions were fully discussed. It was the unanimous opinion that co-operation, as heretofore fully explained, should be continued.

"Opinions were expressed that recent developments seem to require some changes in prices. Subsidiary companies of the United States Steel Corporation have decided to make adjustments to become effective June 1, and it is believed that these will be generally followed. The commodities affected, with the new prices, are as follows:

"Steel bars (15 cents per 100 lb. off), $1.25 base.

"Plates and structural shapes (5 cents per 100 lb. off), $1.35 base.

"Black sheets (20 cents per 100 lb. off), 2 cents per lb. for No. 28 gauge.

"Galvanized sheets, 3 cents per lb. for No. 28 gauge.

"Blue annealed sheets (10 cents per 100 lb. off), 1.50 cents per lb. for No. 10 gauge.

"Steel billets, 4 in. square and larger, $21 per gross ton.

"Sheet bars, $22 per gross ton.

"All free on board Pittsburgh, effective June 1, 1911, for shipment prior to Oct. 1.

"Judge Gary said that he discussed conditions at length in his address at the meeting, but would add nothing to his formal statement at this time. His speech, he said, would be

available for publication as soon as it was transcribed by the stenographers."

Now, Judge, did or not a luncheon take place just previous to June 1, 1911, at which practically all of the steel manufacturers of the country except the Republic Iron & Steel Company were present?

A. I think so.

MR. SEVERANCE: Wait a moment, Judge Dickinson.

THE WITNESS: Before it is finished I will give the facts in relation to it, before the subject is disposed of.

MR. LINDABURY: You read a statement there, did you not?

MR. DICKINSON: I read an article from the Iron Age.

MR. LINDABURY: I think I did not object to it. I want to object to it now.

MR. DICKINSON: I offer it in evidence, and now you object.

MR. LINDABURY: I object to it as hearsay, and further, because the Government's evidence already shows, by the man who wrote that article, that he did not get it from Judge Gary.

MR. COLTON: I do not think that is true. We haven't offered any evidence on that.

MR. LINDABURY: Then I made a mistake.

MR. SEVERANCE: This article, Exhibit 157, "Announced by Judge Gary, after a meeting of manufacturers," is the one you read a moment ago. I turned back to Mr. Stevenson's testimony, the man in connection with whose testimony that was offered, and he said he got it out of the morning papers and not from Judge Gary.

MR. LINDABURY: I want now to put in an objection to that June, 1908, statement, which you read, as having emanated from Judge Gary, upon the additional ground that it appears from the man who swears he wrote it that he got it from the morning newspapers and not from Judge Gary.

MR. DICKINSON: Now let us get down to the one here. I offer this in evidence now. You want to make objection to this one, do you, the one of June 1, 1911, that I have just read?

MR. SEVERANCE: What is that out of?

MR. DICKINSON: Out of the Iron Age.

MR. LINDABURY: I object to it as hearsay, and on the ground that there is no proof that it emanated from Judge Gary.

MR. DICKINSON: I will see what proof there is about it.

By MR. DICKINSON:

Q. Were you at a conference at the Metropolitan Club?

A. Let me give you all the facts; it will take less time.

Q. I don't know; you are a pretty liberal talker.

A. I have to do it now; you will get all the facts.

Q. I know, but I would like to ask a few questions and then I will let you go.

A. When I make these statements I intend to do justice to both sides; whether I do or not, I do not know.

Q. Was there a conference at the Metropolitan Club in New York at about the time stated?

A. Yes.

Q. And were you present at it?

MR. LINDABURY: It was May 29, 1911.

THE WITNESS: Yes.

By MR. DICKINSON:

Q. Previous to that time the Republic Iron & Steel Company departed from their published prices in bars?

A. Yes—or their announced prices, whatever you may call them.

Q. Was this meeting at the Metropolitan Club contemporaneous with or followed by a luncheon?

A. Yes.

Q. When did that luncheon begin and when did it end? It says here it began at 1:30 and ran until 5:30.

A. It began about 1 o'clock and ended about 2 or quarter past two, so far as the luncheon was concerned, and then I made a little speech that probably lasted fifteen minutes, and then we adjourned.

Q. Well, Judge, was there a conference after the luncheon, of 50 or 60 steel manufacturers?

A. Not so far as I know.

Q. At the luncheon or at the conference were there fifty or sixty steel manufacturers?

A. I should think so.

Q. After that did you make any announcement of the results of the meeting substantially like what is here reported as having been made?

A. I think I did, except I had nothing to do with the prices. I mean someone else inserted that.

Q. Someone connected with the Corporation?

A. I do not know; I do not know whether that is so, but some person other than myself made up that list of prices, and I had nothing whatever to do with it, and I was not familiar with the prices, and I could not have made that up.

Q. Do you know whether those prices were the prices that were afterwards sold at by those who were at that meeting?

A. No, I do not, but I haven't any doubt that all the steel people generally followed the prices which somebody else had established.

Q. Now, Judge, if you want to make any further statement I will be very glad to have you do so. Understand, I may except to some of it, but I do this so as not to cut you off from any explanation.

A. Thank you. The Republic Iron & Steel had announced in the papers that it proposed to reduce its prices, and I think in effect stated that it proposed to discontinue giving information to competitors. I some time after that, a few days I think, perhaps, called a meeting of the steel manufacturers at the Metropolitan Club and tendered them a luncheon there.

Mr. Dickinson: Excuse me just a moment there, so as to avoid interrupting you. I just now enter exception to this as incompetent and irrelevant, and as a statement volunteered by the witness and not responsive to the question, and then I will let him go right on.

Mr. Lindabury: That is, you make that objection before he makes the statement?

Mr. Dickinson: Because it is a volunteered statement, yes.

The Witness: After the luncheon I made a brief address which was taken down by a stenographer, and immediately after that the meeting adjourned and I went away. The speech was written up and printed, and the members of the

press more or less got that and parts of it at least were published, and I sent printed copies of the address to various departments in Washington in accordance with my usual custom, and sent copies of it to all the steel people who were present at the luncheon.

After the meeting I had prepared an announcement. I must have left that announcement in my office to be given to the press, and it is apparent that someone inserted these prices. I certainly was informed at the time that the steel people generally reduced their prices to meet the prices of the Republic, but I stated particularly what I would do, and followed up that statement by consulting our own people, and they made up a list of prices and the reduction they proposed to make, and in doing so acted entirely independent of all the other steel people, and if they followed those prices, as I presume they did, they did it voluntarily without any understanding or agreement or obligation to do so. The speech speaks for itself and I have no apologies to make for the language I employed on that occasion.

Q. Judge, on page 9081 of Volume 68 of the typewritten testimony this question was asked you:

"Q. Were prices as a matter of fact, fixed at those meetings or as the result of those meetings?"——

This refers to the Gary dinners and different meetings you attended in connection with them——

"A. They were not."

You attended the Gary dinners, of course. Otherwise it would have been Hamlet without Hamlet, and you attended meetings of the general committee. Did you attend all of them?

A. I think so; there were not many meetings of the general committee, two or three I should think.

Q. You did not attend any meetings of the sub-committees, did you?

A. No.

Q. And were not personally present and personally have no knowledge of what transpired at them?

A. That is true. So far as the United States Steel Corporation was concerned, they had their text; they knew what

we would do and what we would not do, and what we would authorize and what we would not authorize; and I never had any reason to suppose they did not strictly live up to the principles stated by me.

Q. You do not claim to know all that they did?

A. No, I do not.

Q. Judge, I will call your attention to your testimony before the Stanley Committee, Volume 3, pages 134 to 135:

"Mr. Gardner. Finally you paid over $30,000,000, and that did not let them out. Now, what I want to get at is: What were Moore & Schley's obligations that required such an enormous difference as between the original proposition of Col. Payne and what finally was furnished?

"Mr. Gary. These obligations which were paid for by the United States Steel Corporation were not all the obligations of Moore & Schley. They did have obligations in the bank, as I understood, of between thirty and forty million dollars.

"Mr. Gardner. Thirty or forty millions of dollars was about the selling price of the securities?

"Mr. Gary. They had borrowed thirty or forty.

"Mr. Gardner. But they had against that the Tennessee Coal & Iron stock, which was worth something?

"Mr. Gary. And various other stocks. I do not know the details of those loans. But here is a thing I would like to have you get in your mind; it is important: Most of the gentlemen who were participants in this syndicate, so-called, who were wealthy men—many of them, at least—were not obligated at all on the Moore & Schley loans; but, as I understood it, and as I believed from their acts at the time, they were very glad to turn in their stock, which they owned at these prices which were agreed upon. But just how much of the bonds which we turned over were needed by Moore & Schley to take care of themselves we were never informed.

"Mr. Gardner. Here is what I want to get at. You said you and Mr. Frick decided that the stock was worth from 60 to 65, in your opinion.

"Mr. Gary. Not more than that.

"Mr. Gardner. That is all you cared to pay for it, ordinarily?

"Mr. Gary. Yes.

"Mr. Gardner. But on account of Mr. Morgan's representation to you that if Moore & Schley failed it would be followed by a financial panic whose size could not be measured, you finally gave them 100 for that which you thought, only as a business venture taken by itself, to be worth only $65; in other words, that you came to the rescue of Moore & Schley to the extent of over $30,000,000?

"Mr. Gary. Not over $30,000,000.

"Mr. Gardner. Why not?

"Mr. Gary. You mean the total?

"Mr. Gardner. You gave them in bonds, which were convertible into cash, somewhere from 79 to 84 of its face value; you gave them $30,000,000. That is, what they could use as cash. That is what I want to get into my mind, whether that great amount of money was necessary to avert this calamity which was impending, in view of the fact that a large number of holders in the pool of Moore & Schley were men whose interest it was obviously to share with you that cost of averting a panic?

"Mr. Gary. I do not know the figures with respect to the indebtedness of Moore & Schley, which was secured by this stock; nor do I know how many other members of the syndicate owned and had put up that stock. Mr. Schley, in his testimony, refers to the fact that a good deal of it was up. I do not know how much, and we never had those figures. What we did know, or what we were informed, was that eight or nine million dollars was not sufficient, and we were also told that there was no way of preventing this failure except by the purchase of the whole of the stock."

Now, Judge, do you recall giving that testimony? And state whether or not you gave it as recorded there.

A. I remember the circumstances. I presume I did give that in substance. I cannot say that I did not.

Q. And at the time you gave it you gave it as you understood the facts to be, of course?

A. Of course I did.

Q. Judge Gary, what information did you have in regard to Mr. Schley upon which you based any statements that you

may have made to President Roosevelt in regard to their holdings or their control of the Tennessee Coal, Iron & Railroad Company; that is to say, what were your sources of information?

A. Mr. Ledyard and Mr. Schley; Mr. Ledyard principally.

Q. How about Mr. Morgan?

A. I do not think at that time I had very much information from Mr. Morgan.

Q. But I mean in regard to the holdings of Moore & Schley, and what they consisted of?

A. I cannot remember that now.

Q. What steps did you personally take or have taken yourself directly to ascertain, by examination or otherwise, what the condition of Moore & Schley was, or what their holdings were or what their debts were?

A. I have stated that in answer to your question a day or two ago, with reference to having a representative of Morgan & Company make an examination, and our people examining the Tennessee books and so forth.

Q. Did you have that done or Mr. Morgan have it done?

A. Well, I cannot answer that. It seems to me that I requested some member of the firm of J. P. Morgan & Company to have it done, and that whoever it was had it done by one of their men; that is my impression of it now.

Q. Did you, yourself, send anybody to have it done?

A. I cannot answer that.

Q. Mr. Colton thinks you said Tennessee. Did you mean Moore & Schley?

Mr. Lindabury: No, he said Moore & Schley and the books of the Tennessee; he mentioned both.

The Witness: I only referred to the general subject of my testimony the other day; we had our people, our comptroller, I think; some others perhaps, examined the books of the Tennessee Coal & Iron in reference to their properties.

By Mr. Dickinson:

Q. Did you yourself send anybody from your company to make any examination of the books of Moore & Schley?

A. I do not remember.

Q. From whom did you then get your information, from which you made any statements which you may have made to President Roosevelt? I want to get the sources now.

A. The statements I made to President Roosevelt in substance as to Moore & Schley I got from Mr. Ledyard.

Q. From Mr. Ledyard?

A. Yes, and relied on those statements.

Q. Did you have any figures from Mr. Ledyard or any memorandum, or was it just a verbal statement?

A. I should think verbal statements.

Q. Didn't you get from Mr. Morgan some statement?

A. I answered the other day that as I remembered Mr. Morgan showed me a paper that was returned giving figures, but I do not remember those figures now.

Q. Can you state anything that was on that memorandum?

A. No, I cannot; that was a closed incident, you understand. I had no reason for keeping those figures in mind.

Q. What was the nature of that memorandum? Can you state what that was?

A. No, but it seems to me Mr. Morgan showed me a paper that came from someone in their office referring to the condition of Moore & Schley, but I cannot tell you when that was. I have no way of fixing the time.

Q. Do you not know what that paper showed?

A. I do not remember now.

Q. Didn't that show a certain amount of free stock that was in the possession of Moore & Schley, owned by other people, that they had no claim on?

A. If you say it did I am willing to admit it, but I don't remember anything about it.

MR. LINDABURY: I object to that question. Counsel does not say it did. As a matter of fact it did not and he knows it did not.

THE WITNESS: When I say I don't remember anything about it that ought to be sufficient.

MR. LINDABURY: It showed it was free stock but it did not show it was somebody else's stock.

By MR. DICKINSON:

Q. You cannot really give any statement?

A. No.

Q. As to what that paper did show?

A. No. I remember what I consider the significant facts which I got from Mr. Ledyard.

MR. DICKINSON: I want to object now to the evidence given in the examination in chief by Judge Gary as to what that paper purported to show as being incompetent and irrelevant.

MR. LINDABURY: The paper is irrelevant, you mean?

MR. DICKINSON: His testimony as incompetent.

MR. LINDABURY: As to his recollection of what the paper showed?

MR. DICKINSON: Yes.

MR. LINDABURY: Why?

MR. DICKINSON: Showing that he does not recollect, and that therefore any statements in regard to the paper would be incompetent and secondary evidence of the paper.

By MR. DICKINSON:

Q. You have no recollection of that; you could not reproduce the paper, could you?

A. No.

Q. You could not state a single item on it?

A. A single figure, you mean?

Q. Yes.

A. I could not from recollection now, no.

Q. Could you state any substantial facts shown by the paper; if so, what now?

A. It seems to me the paper showed a surplus or unpledged amount of Tennessee stock to the extent of thirty-five —no, I won't undertake to say, because my memory is not good enough. I do not want to be mistaken about it. I recollect that they had some free stock.

Q. I want to offer in evidence from the Stanley hearings Judge Gary's testimony, Volume III, pages 141 and 142. Judge, I call your attention to what was said there, and I want to ask you really if your memory is not indefinite about those transactions?

MR. LINDABURY: Will you specify the particular part you want?

MR. DICKINSON: I am going to read it.

Q. (Reading):

"Mr. Littleton. On the question of the salvation of the company from failure let me ask you this question: Moore & Schley could not have failed for a large amount of money unless the loans which they had in the banks were called, could they? It is not likely?

"Mr. Gary: I woud not say that it was likely; of course, I do not know.

"Mr. Littleton: Did anybody ascertain the number and amounts of the loans which they had in the banks at that time?

"Mr. Gary: We endeavored to verify the statement of Moore & Schley. I sent two representatives to their books who made an examination. I have attempted since I was subpoenaed to come before this committee to get the result of that examination. One of the gentlemen, and the one who was best informed in regard to the result, I could not find. I have forgotten his name, but it is not material. He has, I think, left the city. I could not find him. Mr. Joyce, the other one, has only a general recollection. He says that he remembers he reported to me that their loans were very large, and that the securities were distributed throughout the different banks.

"Of course you know how the business of a broker is done. He buys stock for his client, and his client may deposit a margin in cash, and he takes the stock and goes to a bank and borrows money on the stock and puts that up as collateral.

"Mr. Littleton: Only a pledge.

"Mr. Gary: Only a pledge.

"Mr. Littleton: In order to make this transaction justifiable in the afterview, whatever might have been the foreview of it at that time, it was easy for you to have been deceived, unless you actually knew the amount of money which Moore & Schley owed, as to the dire necessity of purchasing this property?

"Mr. Gary: I would think so. I think we were deceived, whether intentionally or otherwise, in this respect. I be-

lieved at that time, although I presume it was not so represented, that Moore & Schley had a very much larger amount of Tennessee Coal & Iron stock as collateral than I now believe, after seeing this syndicate arrangement, they had actually deposited, unless the stocks of many of these rich men were deposited on account of indebtedness by the members of this syndicate to Moore & Schley."

Now, Judge, before I ask you about giving that testimony, I will ask you if your memory is not rather general on that subject, and if you bear the details really in mind?

A. I do not bear the details in mind now very well in regard to the examination of their securities. The figures of the report which they made I must admit——

Q. You did give this testimony?

A. I did.

Mr. Lindabury: I think you interrupted him.

The Witness: (Continuing) As to what I considered the main fact, and what was contained in the statement to President Roosevelt I think my mind is pretty clear, clear enough so that I am able to say there was no misrepresentation made to President Roosevelt, or any fact that I knew withheld.

By Mr. Dickinson:

Q. But you do not undertake to say what this memorandum showed as to the amounts actually owned by Moore & Schley, and how much of it was merely in their control and owned by others upon which they had no claim?

A. Not from my present recollection.

Q. Now, Judge, this matter came up, as I understood you to say, on November first. Mr. Morgan sent for you and told you about this?

A. I said I thought it was probably on that date.

Q. And that the matter was very imminent and if something were not done, that it might bring on a crisis?

A. Yes.

Q. When was the authority first given by the United States Steel Corporation to make this purchase?

A. You mean what day?

Q. Yes.

A. I should think on the following Monday.

Q. That was after you came back from Mr. Roosevelt?

A. Yes; or it may have been given before, but subject to the result of that trip.

Q. I call your attention to the minutes——

A. (Continuing) Probably the authority was given subject to the result of the trip to Washington.

Q. Upon what day was the final agreement reached upon which you agreed upon a price, and the authority was given to purchase at that price?

A. I am not so certain about that.

Q. Judge, I will call your attention to the minutes in that connection.

A. I should think it was on Sunday.

Q. On Sunday? It appears from Government Exhibits, Volume II, page 610, meeting of the finance committee, that the whole subject was referred to the chairman with power. That was November 3.

A. Would that be Sunday?

MR. LINDABURY: Yes, that was Sunday.

MR. DICKINSON: Sunday, yes.

By MR. DICKINSON:

Q. Then it had really come up first on the previous Friday, had it not?

MR. LINDABURY: Yes; that is right.

THE WITNESS: On the 1st, yes. I think so.

MR. DICKINSON: That is right, yes.

By MR. DICKINSON:

Q. It was resolved to recommend to the board the purchase of the properties of the Tennessee Coal, Iron & Railroad Company on terms suggested, and that the subject matter be referred to the chairman with power. Did that mean with power to you to purchase without regard to what action the board might take?

MR. LINDABURY: I suppose it speaks for itself, Judge.

MR. DICKINSON: Very well, then.

THE WITNESS: I should say so. The finance committee had all the power of the board; but still, we no doubt intended

then, and afterwards probably carried that into practical effect, to report the whole matter to the board and ask for its approval.

By Mr. Dickinson:

Q. On November 4 it was resolved to recommend to the board of directors the purchase of the properties of the Tennessee Coal, Iron & Railroad Company, on terms now suggested and different somewhat from those suggested at the meeting held at nine p. m. on November 3. What was the difference in terms between those two dates? Do you know, Judge?

A. Strange to say, I have been looking for that, and could not find it before, but it corroborates what I had in my mind. I understood, certainly, and Mr. Ledyard and I agreed upon a basis of 90 for their stock; that is, 90 to be paid for in our bonds at 84. Afterwards he reported to me that Moore & Schley could not possibly get through their difficulty for less than the price of 100; and so I went back to the committee.

Q. Then on November 5, 1907, it appears that after a further discussion in regard to the terms for acquiring the property of the Tennessee Coal, Iron & Railroad Company, the subject matter was again referred to the chairman. It had not been determined then, had it?

A. I do not remember that now. There may have been something come up in our negotiations; I do not remember. The incident having been closed, as I supposed, at that time, forever, it would not be at all natural for me to remember the details of things that I did not consider very important.

Q. Then on November 6, 1907, appears the following:

"Resolved, That for the purpose of effecting the exchange of our ten-sixty-year five per cent sinking fund gold bonds for the capital stock of the Tennessee Coal, Iron & Railroad Company (in accordance with resolution adopted by the finance committee on November 5th, 1907), Mr. Richard Trimble, treasurer, be, and hereby he is, authorized and directed to execute and deliver to Messrs. J. P. Morgan & Company an assignment covering certificate L118 for $30,000,000 par value of the foregoing bonds now registered in the name of" and so forth.

The transaction, then, was not completed until November 6th, was it?

A. Paid for, you mean? Probably not.

Q. Was it authorized before then?

A. That had nothing to do with the authorization.

Q. Did not this authorize the payment for it?

A. It was the formal resolution to authorize the transfer by the treasurer of the bonds.

Q. Well, on November 5 there was a meeting of the finance committee, Tuesday, November 5, 1907, at nine o'clock p. m.—I just read that—and after further discussion in regard to the terms of acquiring the property of the Tennessee Coal & Iron Company, it was again referred to the chairman with power.

Now, it had not been determined then, had it?

A. I think so, yes.

Q. How? Had the trade been made then?

A. I think the trade was really made on Monday. There may have been some details which interfered with closing the trade.

Q. And then it says: "Further discussion in regard to the terms of acquiring the properties of the Tennessee Coal, Iron & Railroad Company."

A. That discussion—well, that is one way of saying the finance committee met and voted so and so. That is the ordinary expression in use.

Q. Had the trade been concluded before this discussion in regard to the terms as recorded here?

A. I think it had, in the same sense that a trade would be concluded if I should say to you "I will give you so much money for a certain piece of property," and you say "I will accept it," the trade might not be carried into effect, the papers might not be executed, there might be some details there in regard to some disposition of a tenant and things to straighten out and finish up.

Q. When did you first say to anybody representing the other side what in effect was closing the deal upon terms that were afterwards carried out?

A. My opinion is that on Sunday I said to Mr. Ledyard

that if I found no objection to the transaction at Washington we would exchange the bonds for the stock.

Q. On what basis, the basis that was afterwards carried out?

A. Yes, I think so.

Q. I will call your attention to this: November 4th would be on Monday. "At a meeting it was resolved to recommend to the board of directors the purchase of the properties of the Tennessee Coal, Iron & Railroad Company on terms now suggested and different somewhat from those suggested at the meeting held at nine p. m. on November 3rd." That was the day before.

A. Then I am probably mistaken in supposing that I did tell him that on Sunday. I should say I thought it was closed on Sunday, probably, but found on Monday that it was not closed, and, according to Mr. Ledyard, Moore & Schley, could not get through.

Q. Then they were different terms that came up on Monday from what you considered on Sunday?

A. Different price, you mean?

Q. Yes.

A. I should think so from those minutes.

Q. What I want to get at is when it was that the thing was finally determined, even if not afterwards carried out; I mean, determined as to the closing of the transaction on the price it was actually dealt at, what date?

A. I may be mistaken, but I believe from the minutes I have read that on Sunday I told Mr. Ledyard that subject to the result at Washington we would buy the stock and pay for it in bonds, and that I supposed the price was 90, and after I got back from Washington on Monday I found that they could not get through at that price, and then the price was changed, but the arrangement otherwise still in force. That is according to my best recollection.

Q. It was not concluded if the price was afterwards changed, it was not concluded on the first price?

A. I do not know whether you are dealing in technicalities. I am giving you the facts.

Q. No. What I want to get at was this. The sale was not made on Sunday, was it?

A. I think my impression from the minutes now is that I believe it was made subject to the result at Washington.

Q. But was it actually carried out on the price that you discussed Sunday?

A. It was not, I believe.

Q. Then there was a subsequent price on a subsequent date?

A. I have tried to say that a good many times, Judge, and have given you figures.

Q. Well, I suppose probably there is no use in saying it any further. The bonds were not authorized, however, as shown, until November 6th?

A. Oh, well, the bargain was made, but that formal resolution would be necessary in order to permit the treasurer to have the bonds transferred legally, technically and properly.

JUDGE DICKINSON: That is all.

REDIRECT EXAMINATION.

By MR. LINDABURY:

Q. Was your speech at the May, 1911, dinner published?

A. At the Metropolitan?

Q. Yes.

A. Yes.

Q. Please look at the copy I show you and state if you identify it.

A. Yes. It was entirely impromptu, and the language may not have been well put together, but that is the speech.

MR. LINDABURY: I offer it in evidence.

MR. DICKINSON: We except to that as irrelevant, incompetent and self-serving, and made while the Stanley investigation was in progress.

MR. LINDABURY: It was made while the Stanley investigation was in progress. So was the statement that you called attention to, and I am only offering it now because you have gone into the subject.

MR. DICKINSON: I thought you had some good reason, from your standpoint, anyway.

MR. LINDABURY: Thank you, sir.

(The paper so identified was offered in evidence and marked "Defendants' Exhibit (Gary) No. 66," and will be found in the book of exhibits.)

(Thereupon an adjournment was taken until tomorrow, Saturday, June 14, 1913, at 10:30 o'clock a. m.)

SEVENTY-SIXTH DAY.

EMPIRE BUILDING,
71 Broadway, New York, N. Y.

Saturday, June 14, 1913.

Before SPECIAL EXAMINER JOHN ARTHUR BROWN.

Present on behalf of the United States, MR. DICKINSON and MR. COLTON.

Present on behalf of the Defendants, MR. LINDABURY, MR. SEVERANCE and MR. REED.

ROBERT BACON,

a witness called on behalf of the Defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. LINDABURY:

Q. You were at one time a member of the firm of J. P. Morgan & Company I believe?

A. Yes.

Q. In what year did you become a member of that firm?

A. The 1st of January, 1895.

Q. What was your previous occupation?

A. I had been in business, the banking business, in Boston.

Q. For a number of years?

A. Yes. I first went into the firm of Lee, Higginson & Company.

Q. I did not care anything about the particular connection.

A. Yes; since 1881.

Q. That took in your whole business life, I suppose?

A. Yes.

Q. How long were you a member of the firm of J. P. Morgan & Company?

A. Until the 1st of January, 1903.

Q. Where did you go then; what was your business? Where did you go next after that?

A. I had no active occupation until 1905, when I became Assistant Secretary of State.

Q. There was an interval in between?

A. An interval in between.

Q. How long, two years, did you make it?

A. Two years, yes.

Q. How long were you Assistant Secretary of State?

A. Until January, 1909, when I became Secretary of State for the remainder of Mr. Roosevelt's administration; that was until March.

Q. And then you were Ambassador to France?

A. I was appointed by Mr. Taft Ambassador to France and took office in December, 1909.

Q. And held that office until when?

A. Until April, 1912.

Q. Then you returned to this country?

A. Yes.

Q. And since that time your business connection has been with Harvard College?

A. My chief occupation has been that.

Q. Your chief occupation has been as what there?

A. As a member of the corporation; it is technically called a fellow of Harvard College.

Q. That is what I mean; you have not been teaching there, but have been connected with the management?

A. Yes.

Q. Were you ever a director of the Illinois Steel Company?

A. Yes.

Q. Were you a director of that company at the time the Federal Steel Company was organized?

A. I believe so, but I cannot say definitely that there was not an interval.

Q. Did you become a director of the Federal upon its organization?

A. Yes.

Q. Did you continue in that office down until the United States Steel Corporation was formed?

A. Yes; that is my recollection.

Q. Did you become a director of the United States Steel Corporation upon its organization?

A. Yes.

Q. I believe you continued——

A. Until October or November, 1901, is my recollection.

Q. Yes, I have the date, November 12, 1901; is that right?

A. I believe that is right.

Q. About right, as you recall it?

A. Yes.

Q. You were also a member of the finance committee during the same period?

A. Yes.

Q. My memorandum shows that you resigned from both of those offices on that day.

A. Yes.

Q. That accords with your recollection?

A. Yes.

Q. Did you become a director again at a later date?

A. Yes; I think I should have said the following summer, 1902, upon my return. I went away in the meantime; I was abroad for nearly a year, six or eight months.

Q. My memorandum shows that you succeeded William E. Dodge as director the 3rd of June, 1902.

A. Yes; that is right.

Q. You did not at that time go back on the finance committee, I think?

A. No.

Q. Do you remember how long you continued in the office of director?

A. I will not say it was continuous, but I know that in the following year I was a director.

Q. I have it until September 26, 1905.

A. I do not know whether it was continuous; that was the only point.

Q. Yes, it was continuous. Now, do you know when you went back on the finance committee?

A. I should have said it was after I resigned from the firm in 1903.

Q. I have the date January 6, 1903.

A. Yes, that is it.

Q. You were elected a member of the finance committee?

A. Yes.

MR. DICKINSON: Are you recalling these dates?

THE WITNESS: Not actually the day of the month. I cannot remember those dates.

MR. LINDABURY: Approximately.

THE WITNESS: It is all a matter of record, I believe.

MR. DICKINSON: I am perfectly willing, if Mr. Lindabury says the records show that, that he may simply read it.

MR. LINDABURY: I am all but through, and he has given the year, and generally the month, and I am simply stating from the record I have the actual dates.

By MR. LINDABURY:

Q. Do you remember whether you resigned from the finance committee September, 1905, when you resigned as director?

A. Yes.

Q. Both at the same time?

A. Yes.

Q. Have you since that time had any office in the Corporation, since September, 1905?

A. Not until I again became a director last year; last spring, I think it was.

Q. That is, the year 1912?

A. Yes.

Q. Do you remember the time in the year you became a director, approximately; whether it was the spring, summer or autumn?

A. Summer or autumn, I should say.

Q. I have the date here November 26th, 1912.

A. Yes.

Q. You are not now on the finance committee, I believe?

A. No, sir.

Q. Had you anything to do with the organization of the Federal Steel Company; did you have part in the organization?

A. Yes.

Q. Do you remember the companies that were taken over or went into that organization?

A. Into the Federal Steel Corporation?

Q. Yes.

A. The Illinois Steel Company; the Minnesota Iron Company; the Elgin, Joliet & Eastern Railroad, a belt line out of Chicago; that is substantially all, I think, in the beginning.

Q. Do you remember whether there was another steel corporation to the east of Chicago that went into it?

A. At the time, you mean?

Q. Yes, or about the time.

A. Subsequently we bought the Lorain Steel Company.

Q. How long subsequent?

A. It was not long after.

Q. Were any of those concerns competing with any other of them, so far as you knew?

A. I believe not.

Q. Do you remember what the capital of the Federal Steel was; the issued, not the authorized, capital?

A. I think it was nearly $100,000,000.

Q. Do you remember upon what basis these various concerns were taken over?

A. The basis of what we believed to be their actual value.

Q. What was the object of organizing the Federal, what were the purposes you gentlemen had in view?

MR. DICKINSON: I object to that as irrelevant and incompetent, and laying the ground for self-serving statements.

By MR. LINDABURY:

Q. In a general way; I do not want much detail; what were the general purposes and objects of the organization of the Federal?

A. For the first time, to create a company that did own its raw material, iron ore, and transportation facilities to manufacturing plants, and to the extent of the Illinois Steel Company, the manufacturing plants also of the Lorain.

Q. Did you find as you developed the business of that company any deficiencies in your plan or plants?

A. Yes, indeed; they lacked a great many finishing mills

and distributing plants; it was very incomplete. It was the intention to——

MR. DICKINSON: I object to his stating what the intention was. The question asked was what they found.

By MR. LINDABURY:

Q. Proceed. We desire the evidence, and the Judge simply wants to raise a question.

MR. DICKINSON: I want to confine the witness to the answer, so far as I may, to the question addressed to him.

THE WITNESS: It seems to me it was part of the same question. It was the intention to acquire or build further finishing plants, to make it more complete.

MR. LINDABURY: I have such a pleasant recollection of your kindness on another occasion that I venture to ask if you will not renew it now and reserve your objection or exception until the witness has answered, even if you do not feel like doing it until the end of the day, because it breaks the thread, of course, of anybody's thought.

MR. DICKINSON: As long as his answer is responsive I would be willing to do this, but I think the answers ought to be responsive to the questions.

THE WITNESS: I will do my best to make them responsive. I have no intention of doing otherwise.

MR. DICKINSON: I am not questioning that, but of course we lawyers have a way of objecting to things to keep them within what we call proper bounds.

By MR. LINDABURY:

Q. Now, Mr. Bacon, what, if anything, did the Federal do or contemplate doing or attempt to do to better that situation?

A. After a great deal of thought and discussion there were plans made to finance, if possible, new additions, to make the whole more complete. As I recollect it, there was a mortgage created for that purpose—I forget the amount of it, but I should say $50,000,000 or thereabouts, which was created for the purpose of financing any new mills that it might be determined to build in order to complete it.

Q. I suppose that was to secure bonds, or some form of securities?

A. Bonds, naturally.

Q. And was any attempt made to sell them or to get the money for the purposes you mentioned?

A. Yes, there were several attempts on the part of the management of the Federal Steel Company to arrange terms for financing such a proposition. They never had been successful. It was very difficult at that time to finance a proposition of that kind; they had never been successful.

Q. When did you first hear that the Carnegie properties were for sale?

A. My recollection is that it must have been as early as 1899 or 1900, a year or two before the formation of the United States Steel Corporation.

Q. Do you remember through whom you heard of it?

A. My recollection is that I heard that Mr. Frick had made an attempt to sell the Carnegie Company.

MR. DICKINSON: That is objected to as hearsay, incompetent and irrelevant.

THE WITNESS: It was hearsay; it could not have been anything else.

MR. LINDABURY: As such we accept it.

MR. DICKINSON: It makes it a little better for him to admit it.

THE WITNESS: I will admit anything I believe to be true.

By MR. LINDABURY:

Q. Proceed. You heard that.

A. That was the first time I heard it.

Q. Do you remember through whom you heard it, who told you about it?

A. No, I do not.

Q. When did you hear of it again?

A. At the time the option was given by Mr. Carnegie to Judge Moore and Mr. Frick.

MR. DICKINSON: I object to that as hearsay.

MR. LINDABURY: I asked him whether he heard it. You ought to object to my question; it calls for hearsay.

MR. DICKINSON: Then I object to the question.

MR. LINDABURY: That is better.

By MR. LINDABURY:

Q. Do you remember from whom you heard of that?

MR. DICKINSON: Objected to as irrelevant and incompetent.

A. From Mr. George Baker, my recollection is.

Q. Was the matter of taking over the Carnegie properties, or rather of negotiating for their purchase, in view of these offers, considered among the Federal Directors at the time?

A. Yes.

Q. Once or more than once?

A. Many times informally, I should say.

Q. With whom did you discuss it?

A. Principally, I think, with Judge Gary and Mr. Morgan, who was also a director, but the others, I have no recollection as to them.

Q. Do you remember any approaches being made to Mr. Morgan by his associates, or any suggestions being made looking to his aid or that of his firm, in financing the offer of purchase?

MR. DICKINSON: Wait one moment. I want to enter an objection to that. That is objected to as irrelevant and incompetent, and as involving an assumption that such approaches were made, and it is objected to on the further ground that it is not shown the witness was present and had personal knowledge of the matter.

MR. LINDABURY: Is that all?

MR. DICKINSON: If I were not in a hurry I might put some more.

MR. LINDABURY: Do you desire to have it read again, or do you carry it in your mind?

THE WITNESS: I think I can remember it.

MR. LINDABURY: Very well; you may answer.

THE WITNESS: I am quite sure that I was present at the time that Judge Gary brought the matter to Mr. Morgan's attention, to a definite proposition which had been brought to him by Mr. Frick; that is my recollection.

By Mr. Lindabury:

Q. Do you remember what Mr. Morgan's attitude or reply was?

Mr. Dickinson: I object to that as irrelevant and incompetent.

The Witness: Mr. Morgan and the firm were not convinced it was a possible or good thing for the Federal Steel to undertake at that time.

By Mr. Lindabury:

Q. When did you first hear of the so-called Schwab dinner, in December, 1900?

A. Probably the day after the dinner, within a few days at any rate.

Q. From whom did you hear that?

A. Mr. Morgan.

Q. Did he say anything about the speech that Mr. Schwab had made, or a conversation he had had with Mr. Schwab relating to the subject-matter of the speech?

Mr. Dickinson: Objected to as irrelevant and incompetent.

The Witness: Yes, Mr. Morgan told me of the conversation he had had with Mr. Schwab at that dinner, and it was evident that he had been very much impressed by the new light that had been thrown upon the whole steel situation, its growth and possibilities, and for the first time he indicated to me that it seemed a possible thing to undertake the purchase of the Carnegie Company.

Mr. Dickinson: That is objected to, what the witness stated as having passed between him and Mr. Morgan, as irrelevant and incompetent.

The Witness: That is what you asked me?

Mr. Lindabury: Yes.

Mr. Dickinson: This is not for you especially; it is for the record.

Q. Were you present when Mr. Schwab visited Mr. Morgan a little later than this, in company with Mr. Gates?

A. I was nearly always present; I remember being present on one or two of such occasions.

Q. How soon was the first of those occasions after the Schwab dinner?

MR. DICKINSON: That is objected to because it involves the suggestion that the first of those occasions was after the Schwab dinner, and the witness has not testified that it was.

MR. LINDABURY: I will withdraw the question.

By MR. LINDABURY:

Q. Was or was not the first of those occasions after the Schwab dinner?

A. Yes; my recollection is that it was within a few days, or within ten days; I am not clear about the time, but it was after that dinner.

Q. And was it within ten days or two weeks, for a certainty?

A. That is my recollection. I know that it was not before.

Q. Did you attend upon the conversation that took place then; that is, did you hear any of it, which is the better way of putting it?

A. As I said just now, I was present at almost all the interviews between Mr. Schwab and Mr. Morgan and others on that subject.

Q. Well, can you tell us what the subject of the conversation was on the occasion of Mr. Schwab's first visit to Mr. Morgan?

MR. DICKINSON: That is objected to as irrelevant and incompetent.

THE WITNESS: The subject matter was the purchase of the Carnegie Steel Company. I can answer more broadly, if that does not satisfy.

By MR. LINDABURY:

Q. You can answer more broadly if you recollect.

A. And the justification of the price at which Mr. Carnegie was willing to sell, based upon Mr. Schwab's conviction of the tremendous growth of the steel business, which was very evident at that time; we were upon the eve of a tremendous growth. That in a general way was the substance of it, of which Mr. Schwab tried to convince Mr. Morgan, and impress

him with the fact that the iron and steel business was just bursting into a new and tremendous field of importance and activity and consumption, and that that justified the possibilities, and under those conditions justified the purchase of the Carnegie Company and of others to meet the new conditions.

MR. DICKINSON: So much of the answer as refers to what passed between the parties is objected to as incompetent, and so much as shows conclusions of the witness is objected to as being a conclusion and not a statement of fact.

By MR. LINDABURY:

Q. Did Mr. Morgan himself say very much at the interview in the presence of Mr. Schwab?

A. Mr. Morgan never said very much.

Q. After the interview with Mr. Schwab did Mr. Morgan speak to you on the subject?

MR. DICKINSON: Objected to as immaterial, irrelevant and incompetent.

THE WITNESS: We were in the closest kind of touch every day, and as a result of that, we determined to get the opinion of the other Federal directors; first, Judge Gary, the president.

MR. DICKINSON: So much of this answer as states what was the result or what passed between Mr. Bacon and Mr. Morgan is objected to as incompetent.

By MR. LINDABURY:

Q. What did you do in pursuance of this arrangement or understanding?

A. I went the next day to see Judge Gary and informed him of the fact that the Carnegie Company could be bought.

Q. Where did you see him; at his business office?

A. It is a long time ago. No, I saw him on Sunday morning at his hotel. He lived then in a hotel.

Q. How long did you spend with him that morning?

A. I spent the entire day with him, except luncheon.

Q. You did not stay with him to lunch?

A. No, I did not.

Q. Where did you go to lunch?

A. I am not sure that I had any lunch, but I went back to report to Mr. Morgan.

Q. Then you returned and continued the discussion?

A. Yes.

Q. And what was the subject? I do not want words now, but only the subject of your discussion during that morning or afternoon.

A. It was first the opinion of Judge Gary——

Q. As to what?

A. Upon whom Mr. Morgan relied more or less as to the advisability and feasibility of the purchase, and secondly, to get, through him, the opinion of all the directors of the Federal Steel Company.

Q. Were any steps taken to get the views of the other Federal directors that day or later?

A. Yes. We succeeded in getting them in New York the next morning with the exception of Mr. Marshall Field, with whom we communicated over the long distance telephone, so that the next day we had, I believe, the opinion of all the Federal directors.

Q. How long did they remain together on Monday, the Federal directors, I mean, whom you assembled?

A. Nearly all day, at different times.

Q. Was a conclusion reached that day with reference to the Carnegie offer, I mean as to whether it was wise to accept it or not?

A. My recollection is that, although it was very difficult to persuade some of the gentlemen, a conclusion was reached in principle in the afternoon.

Q. Was there any discussion that day as to how the thing might be financed?

A. No discussion as to detail.

Q. I do not mean detail at all.

A. But naturally, the supposition was that it would be financed by J. P. Morgan & Company.

Q. Do you remember whether Mr. Morgan said anything on that subject to his associate directors as to whether he was willing to undertake it, I mean?

A. Yes, my recollection is that in a very few words Mr.

Morgan finally, after having heard our opinions, said that if they approved and substantiated the estimates in a general way of the business and its probable success, that he would undertake to finance it.

Q. Was there any talk that day as to what, if any, other concerns should be taken over?

A. Yes; it was believed by all the men present, the directors of the Federal Steel Company, that if the Carnegie was purchased other units should be purchased as well.

Q. And were the other units talked of and considered?

A. Yes, they were all considered.

Q. And upon what principle were they chosen?

A. Upon what principle were they chosen? I should say upon the principle of furnishing each an essential part of a completed whole; a new company which should manufacture all kinds of iron and steel products, owning its raw materials, facilities for transportation of raw materials to the mills and finishing plants. I think that was the basis upon which each one of these elements was considered, and of course the price at which they could be acquired, based upon their actual value.

Q. Was any arrangement made on that day or shortly thereafter for opening negotiations with the owners of the various plants that were talked of?

A. Yes. I think it was determined that day to go right ahead and see if they could be bought upon a satisfactory basis.

Q. Who was entrusted with the negotiations, if you remember?

A. I think that J. P. Morgan & Company bore the brunt of it.

Q. Did you take any part in it, thereafter, I mean, in the actual negotiations?

A. Yes, I took part in it every day, in some way.

Q. And other members of your firm?

A. Yes.

Q. Mr. Morgan?

A. Naturally, Mr. Morgan, yes.

Q. And did any of the other Federal directors, Judge Gary or any of the rest, help along?

A. My recollection is that there were informal meetings of the Federal directors nearly every day; that Mr. Porter and Mr. Mills and Mr. Thayer and Mr. Ream and the others were all in active consultation about each of the negotiations; that is my recollection.

Q. Did Judge Gary have any hand in it?

A. Judge Gary, of course, directed it all.

Q. Do you remember which was the last of the group of subsidiary owners that you settled with or agreed with?

A. As I recollect it, the Moore companies and the Bridge Company were taken in subsequent to the formation.

Q. I was not alluding to those.

A. You mean at the time?

Q. The first group: Do you remember which—whether the Wire or the Tube——

A. Yes; I know.

Q. The Moore was the last?

A. If you mean that; the National Steel Company and that group.

Q. Yes. Do you remember who represented them?

A. I do, sir, very well.

Q. Who?

A. Judge Moore and his associates.

Q. Was that a stiff negotiation?

MR. DICKINSON: I object to that as an improper question——

MR. LINDABURY: I withdraw that, Judge.

By MR. LINDABURY:

Q. Was that negotiation with the Moore Company a long or a short one?

A. It was comparatively long.

Q. What about the Steel & Wire? Was that prolonged?

A. That was prolonged, too. I think it was concluded before the National Steel Company.

Q. Do you remember whether the best terms were made with each of these groups that you were able by close negotiations to effect?

Mr. Dickinson: Objected to as irrelevant and incompetent, as calling for a conclusion of the witness upon an unrevealed state of facts.

The Witness: I know that they were the best terms that Mr. Morgan, in his opinion, could possibly obtain.

Mr. Dickinson: I object to the witness's statement as to any opinion that Mr. Morgan may have entertained, as incompetent, irrelevant and hearsay.

The Witness: I may add that I believed the same thing.

Mr. Dickinson: This is objected to as stating a mere belief of the witness, and as a mere conclusion of the witness upon an unproved state of facts.

By Mr. Lindabury:

Q. Was that your belief, then?

A. Yes, sir.

Q. Was it founded on your participation in the transaction?

A. It was.

Mr. Dickinson: Objected to as incompetent and irrelevant.

By Mr. Lindabury:

Q. Did you have a part in the taking over of the Rockefeller ore properties, about a month later?

A. I should say not. Of course, I——

Q. My question was not expressed quite as I intended. Did you take part in any discussion among you gentlemen who were forming this company on the subject of acquiring this property before you began negotiations for its acquisition?

A. You mean I, personally?

Q. You personally, yes.

A. I was in consultation with Judge Gary almost every day, and while I do not remember having taken part with any representatives of the sellers, the ore people, I think I may say that I took part in it by consultation with Judge Gary as director.

Q. Were you present or did you participate in the decision of the question as to whether you should open negotiations for its acquisition? That is what I mean.

A. That was one of the questions discussed by all the directors.

Q. What was the object of purchasing that property?

MR. DICKINSON: That is objected to as incompetent and irrelevant.

THE WITNESS: To obtain a further supply of ore in addition to that which we already owned through the Minnesota Iron Company and its related companies.

By MR. LINDABURY:

Q. Why did you want any more?

MR. DICKINSON: That is objected to as incompetent and irrelevant.

THE WITNESS: Because it became perfectly evident that the iron and steel business, the consumption of iron and steel, its introduction into almost every form of construction, was going to bring about an entirely new and unbelieved consumption of iron and steel; and that if the United States Steel Company was going to do what it was believed it could do, and must do, and has done, it became perfectly evident that there must be a very large supply of ore in reserve in the future. The estimates of the growth of the consumption of steel were almost unbelievable at that time. We were also very much impressed and influenced by the opinion of the best among the iron masters of the time, the older men. I remember especially the opinion of Abram S. Hewitt, upon which Mr. Morgan had relied after many years of the closest intimacy, and that Mr. Hewitt had prophesied, perhaps ten years before——

MR. DICKINSON: I think I ought to enter an objection now to the witness, stating what Mr. Hewitt had prophesied.

MR. LINDABURY: You do not want to break up the witness's answer in that way, do you, Judge?

MR. DICKINSON: Yes, I do, when he is traveling so far afield as that and basing his answers upon the reliance of Mr. Morgan on Mr. Hewitt, and stating the prophesies of Mr. Hewitt, and what the Corporation has done since the time to which his mind was addressed. I object to all that as incompetent and irrelevant.

MR. LINDABURY: If there were a judge here to rule, he would not allow you to interrupt the witness in the middle of an answer, and I do not think you ought to do it.

MR. DICKINSON: And I do not think he would allow the witness to travel out in that direction, either.

THE WITNESS: Judge Dickinson, I did not mean to travel far afield. I was giving honestly my reasons for the acquisition of ore supplies, and I could not answer in just a few words. Those were the reasons which influenced Mr. Morgan and me to approve of the purchase of great bodies of ore for the future.

MR. DICKINSON: I am just recording my exception. I am not going to argue with the witness.

THE WITNESS: Because I think you intimated it was not a proper answer, and that I was traveling far afield. I was trying to say that I did not do it intentionally, and I apologize.

MR. DICKINSON: I do not question that at all, Mr. Bacon. I want the record to show that.

MR. LINDABURY: We do not consider your answer afield at all, but directly responsive to the question, and I wish you would now finish it, if you remember where you were broken off.

THE WITNESS: I think I have finished.

(The stenographer repeated the question and answer under discussion as follows:)

"Why did you want any more?

"Mr. Dickinson: That is objected to as incompetent and irrelevant.

"The Witness: Because it became perfectly evident that the iron and steel business, the consumption of iron and steel, its introduction into almost every form of construction, was going to bring about an entirely new and unbelieved consumption of iron and steel; and that if the United States Steel Company was going to do what it was believed it could do, and must do, and has done, it became perfectly evident that there must be a very large supply of ore in reserve in the future. The estimates of the growth of the consumption of steel were almost unbelievable at that time. We were also

very much impressed and influenced by the opinion of the best among the iron masters of the time, the older men. I remember especially the opinion of Abram S. Hewitt, upon whom Mr. Morgan had relied after many years of the closest intimacy, and that Mr. Hewitt had prophesied, perhaps ten years before"——

MR. DICKINSON: I object because the witness is basing his answer at a time previous to the formation of the Corporation upon what the Corporation has done since it was formed.

And it is objected to, as far as based upon the opinion of iron-masters of the day, as being irrelevant, incompetent and hearsay, and upon the further ground that there are no disclosures as to what those estimates were or who made them.

MR. LINDABURY: You had not finished the prophesy.

THE WITNESS: I will finish the sentence, if I may. He had prophesied that the consumption of iron and steel would exceed beyond all belief, giving accurate and exact figures of his prophesy, any estimate that had at that time been made. That was the substance of the sentence.

MR. DICKINSON: This additional answer is based upon an assumption of the witness that these figures of Mr. Hewitt were accurate, it not being shown what those figures were, and it is further objected to on the ground that it is irrelevant, incompetent and hearsay.

MR. LINDABURY: Have you finished your objection, Judge?

MR. DICKINSON: Yes.

By MR. LINDABURY:

Q. Mr. Bacon, did you or Mr. Morgan, or both, advise with Mr. Hewitt about the organization of the Steel Corporation?

A. Very frequently.

Q. Do you know whether or not Mr. Morgan relied upon Mr. Hewitt's advice in the part he took in the organization?

A. I am very sure that he relied a great deal upon his advice and opinion.

Q. And did you?

A. I did.

Q. Who was Abram S. Hewitt?

A. He was better known publicly as the Mayor of New York, but known in the community as one of the finest and highest types of the older citizen, a merchant and manufacturer.

Q. And as an iron manufacturer or master, what was he; what was his position?

A. He was interested in——

Q. I do not mean his particular interest, but what position did he stand in among iron-masters and manufacturers? Was he noted or not?

A. Everyone, I remember, without exception, had considered him to be one of the wisest, and, in fact, the Nestor of the iron and steel family in this part of the world.

Q. Was he interested in any of the corporations that you gentlemen selected to take over in forming the United States Steel Corporation?

A. Mr. Hewitt, as I remember it, had some small structural plant, or a plant which did some structural work, which had been merged in the Bridge Company, and he was also quite largely interested in the Trenton Iron Works, which afterward, some time afterward, were purchased directly by the United States Steel Corporation.

Q. That purchase was several years after that, was it not?

A. Yes.

MR. DICKINSON: The American Bridge Company?

THE WITNESS: No, the Trenton Iron Company; I think that is the company's name.

MR. LINDABURY: That purchase was in 1904 or 1905.

By MR. LINDABURY:

Q. Do you remember whether he was interested in the American Bridge Company or don't you remember?

A. I do not know. As I said, I remember his having an interest in a small structural works, which I believe had been included in the American Bridge Company. So far as I know that was his only interest.

Q. That was not a large affair, was it?

A. A very small affair.

Q. I think Mr. Hewitt became a director of the Steel Corporation and remained such until his death, did he not?

A. Yes.

Q. And you remember through whose influence he was put on that board?

MR. DICKINSON: That is objected to as irrelevant and incompetent.

THE WITNESS: Why, Mr. Morgan's influence, I am sure, except it was by general consent.

By MR. LINDABURY:

Q. Do you remember who suggested, I perhaps ought to have said.

MR. DICKINSON: That is objected to as irrelevant and incompetent.

A. Mr. Morgan, from my recollection.

By MR. LINDABURY:

Q. You have said he served until his death, and possibly you remember about when that was, the year, do you?

A. Yes. I think it was two years or more after the Steel Company was formed; in 1903, I should think.

Q. In the discussions with regard to the offer of the Carnegie property between you and Mr. Morgan, and between you and Mr. Gary, and later with the Federal directors assembled at the office of J. P. Morgan & Company, was anything said on the subject of a monopoly or the suppression of competition or the restraint of trade?

MR. DICKINSON: That is objected to as irrelevant and incompetent, and also as calling for a question involving the opinion of the witness as to what constituted a monopoly or restraint of trade, and not calling for what was said.

THE WITNESS: My recollection is that it was the unanimous opinion expressed——

MR. DICKINSON: I object——

MR. LINDABURY: (Interposing) I will have to ask the Master to rule that you do not interrupt the witness while he is answering. You may make any objection to the question

before it is answered, or to the answer after it is delivered, but you have no right to break in on a witness while he is in the act of answering. I think the Master would so rule.

THE WITNESS: It was said by all those gentlemen present, I believe all of them; I know by Mr. Morgan, that under no consideration would he take part in anything which was or might be considered to be a monopoly or any attempt to restrain competition. I know that that was one thing furthest from his willingness to participate in.

Q. What were the objects discussed which it was sought to attain?

MR. DICKINSON: That is objected to as calling for the conclusion of the witness and not for the facts.

By MR. LINDABURY:

Q. Let me frame it a little differently. What were the objects to be attained as they were discussed by you?

MR. DICKINSON: That is objected to because it calls for a conclusion of the witness on what may have been discussed and does not call for the facts and what was said.

MR. LINDABURY: In view of that objection I will withdraw the question and put another:

By MR. LINDABURY:

Q. What was said by the gentlemen present with respect to the objects to be attained by the organization?

MR. DICKINSON: Objected to as irrelevant, incompetent and self-serving.

THE WITNESS: It was said by all those gentlemen present, and I knew it to be their opinion, having been so closely associated with them for many years, that the object to be attained was the creation of a great new steel company based upon the Federal Steel Company, which would be able, by the ownership of its raw materials, by all legitimate means of rail and lake transportation, and by the ownership of finishing mills of all descriptions, both in the East and West, to create a plant which should be able to manufacture every kind of iron and steel, and by reason largely of its ability to reduce

the cost of production and the territorial distribution of its plants and activities, sell its products to the best advantage in every market in the world. I know that to be the object of those men that formed the United States Steel Corporation.

MR. DICKINSON: This answer is objected to because it does not state what was said; but draws the conclusion of the witness, and is largely based upon his idea of the opinions that others entertained, and is also a conclusion of the witness.

THE WITNESS: All that was said, Judge. It may not be exactly those words, but that was the substance of it.

By MR. LINDABURY:

Q. Mr. Bacon, what was the personal view of Mr. Morgan with regard to this organization, its purposes, and what might be expected to be accomplished.

MR. DICKINSON: That is objected to as irrelevant and incompetent and hearsay.

A. Mr. Morgan believed that if he could take part in the formation of such a company it would be the greatest, the crowning achievement of his business career. He believed that the effect of such a creation would be, upon the whole industrial fabric, the industrial life of this country, of tremendous beneficial effect, convinced as he was by Brother Schwab and the other experts that almost inconceivable results could be obtained in the way of lowering cost of production of iron and steel, that such a company would bring more good into our whole national life, constituting as it did the greatest single factor in the great constructive work of the country, than could possibly be attained in any other way. His first great object was, as I have said, by reason of the decrease in cost of production to make it possible to so improve the conditions of labor by increasing wages and bettering the conditions, and, by enabling the consumer always to depend upon stability of prices, to bring about a new condition of things. Those, briefly, were the ideals and ambitions of Mr. Morgan in forming the United States Steel Company.

Q. Was the thought of acquiring a monopoly in the industry in Mr. Morgan's mind at all, so far as his mind was disclosed to you?

MR. DICKINSON: This is objected to as incompetent and irrelevant, asking for a conclusion of the witness upon unproved things transpiring between him and Mr. Morgan, and also as laying the basis for self-serving statements.

By MR. LINDABURY:

Q. What do you say, Mr. Bacon?

(By request, the stenographer repeated the question.)

A. Only so far as he was determined to prevent it by every effort of his own. Nothing was so far from Mr. Morgan's desire as a possibility of creating anything which approached a monopoly or could in the slightest degree restrain trade.

Q. Did you or Mr. Morgan or the firm of J. P. Morgan & Company take part in the organization of the United States Steel Corporation, or, in particular, in the acquisition of the Carnegie properties, in order to prevent the building of tube works by the Carnegie Company at Conneaut?

MR. DICKINSON: This is excepted to as irrelevant and incompetent.

THE WITNESS: Certainly not.

By MR. LINDABURY:

Q. Was the matter of the building or proposed building of the tube works at Conneaut by the Carnegie Company mentioned or discussed at all by any of you gentlemen in connection with the question of purchasing the Carnegie Company or organizing the Steel Corporation?

A. I have no recollection——

MR. DICKINSON: That is excepted to as incompetent and irrelevant.

MR. LINDABURY: If you could show that it had been, I think you would believe that it was highly relevant.

MR. COLTON: Maybe we will.

(By request, the stenographer repeated the last question and the unfinished answer of the witness.)

MR. LINDABURY: Judge Dickinson, you interrupted the witness as he was starting to answer.

(To the stenographer:) Strike out what the witness started to say when he was interrupted and read the question to him so that he may answer it now.

MR. DICKINSON: No, leave it in.

MR. SEVERANCE: It is not fair——

MR. LINDABURY: That is happening all the time, Judge——

MR. DICKINSON: If you will let me know when you get through, and the witness will pause, I will interpose my objection and there will be no difficulty; but almost invariably Mr. Bacon begins his answer before I have an opportunity to make my objections. I do not interrupt him and I know he does not mean to interfere with my objections.

MR. LINDABURY: I take back what I said, Judge. I recall that you had not had an opportunity to put in your objection, and that you were entering your objection, which was your right.

THE WITNESS: I am a pretty poor witness. It is my first offense, practically——

MR. DICKINSON: It is not an offense. I know you do not intend to keep me from entering my objection, Mr. Bacon.

MR. LINDABURY: Strike out what the witness started to say in answer to the question, and read the question to him, Mr. Stenographer.

MR. DICKINSON: No.

MR. LINDABURY: Yes, that will be done, because of your interruption——

MR. DICKINSON: It will not be stricken out. He may answer now, all he pleases.

(The question under discussion was repeated by the stenographer, with the unfinished answer thereto, as follows:)

"Q. Was the matter of the building, or proposed building of tube works at Conneaut by the Carnegie Company mentioned or discussed at all by any of you gentlemen in connection with the question of purchasing the Carnegie Company or organizing the Steel Corporation?

"A. I have no recollection"——

THE WITNESS: I have no recollection that the subject was ever mentioned as a factor of the slightest importance as affecting the negotiations. I remember that it was said that such a plant was contemplated by the Carnegie Company, but beyond that it made no impression upon me, and I know

that it was not a factor of any importance in the consideration of the purchase of the Carnegie Company.

Q. Did you gentlemen in your conversations relating to the proposed purchase of the Carnegie Company by the organization of the Steel Corporation discuss or consider at all any suggestions that unless this were done there might be other rival plants built or existing plants extended, and so competition increased with any of the concerns that you were interested in?

MR. DICKINSON: Objected to as incompetent.

THE WITNESS: Possibilities of the government of all these companies was naturally a subject of common discussion in the newspapers. So far as I recall, the acquisition of each of these units was considered as a whole, and not in regard to the construction and extensions of similar plants by anyone else.

By MR. LINDABURY:

Q. Had you heard any threat on the part of Mr. Carnegie or his company to build anything but tube works?

A. No.

Q. I want to ask you what the policy of the Steel Corporation was during the time or times that you were connected with it, with respect to its employes?

MR. DICKINSON: That is objected to as irrelevant and incompetent.

THE WITNESS: One of the first things considered by the company was some plan for bringing about better conditions of labor, some plan of co-operation and participation in the benefits and profits of the company, which was considered the only way practically of helping to solve the relations of capital and labor. Various plans were suggested, and finally the plan which is so well known was undertaken as a beginning, not believing that it was complete or satisfactory, but as a new departure, and as a real evidence of the determination of the management to bring about better and more satisfactory conditions with their labor.

By MR. LINDABURY:

Q. Was Mr. Morgan interested particularly in that question?

MR. DICKINSON: Objected to as irrelevant and incompetent.

THE WITNESS: Yes.

By MR. LINDABURY:

Q. Mr. Morgan was a director?

THE WITNESS: Mr. Morgan was a director; he had been a director in the Federal Steel Company. There was no question the solution of which was so near to Mr. Morgan's heart, in my opinion, as helping to create better and more satisfactory conditions of labor. It had been evidenced in hundreds of ways in dealing with the questions that came up between the different corporations in which he was interested, and he felt that this was the greatest opportunity that had ever presented itself to carry out his ideas as often expressed on that subject, often expressed to me.

Q. How soon after the Corporation was formed was this matter taken up?

A. Almost immediately informally; it required many months to complete.

Q. Has it been lost sight of at any time since?

A. I believe it to have been one of the chief aims of the management, notably Judge Gary, to maintain it and to improve it and to develop it, and he has not succeeded in developing it much farther than originally planned because of the innumerable obstacles that have been put by many people, and so it remains about as it was finally decided upon in those early years of the company's existence.

Q. What was the policy of the Corporation with regard to its competitors, that is, with regard to the manner in which competition with its competitors should be carried on by the Corporation's subsidiaries?

MR. DICKINSON: Objected to as incompetent and as calling for a general conclusion and opinion of the witness, and not for any facts from which the Court could itself form any opinion as to what the witness bases his conclusion on.

THE WITNESS: The facts are that the policy of the company from the beginning has been to change the old methods of dealing with competitors. Judge Gary, who has done more for the United States Steel Corporation in its development and the benefits it has brought all hands than any one man since its formation has made it a cardinal point of his policy, and has tried his best to inculcate it upon all the sub-companies, that there was a new order of things, that there were new rules of the game in dealing with competitors, as well as in other human relations. Judge Gary has talked from the very first and has tried to compel the actions of all the others in the Corporation towards dealing fairly and decently with competitors, as being the only way in which any kind of stability of prices or of conditions could be maintained. He has from the beginning preached and practiced the fairest kind of dealing with his competitors, keeping them informed, as far as he legitimately could, of all the conditions of the Steel Corporation, and by doing so has gradually acquired a degree of confidence that, in my opinion, has never existed before amongst competitors. The old conditions have changed; the old destructive and ruinous and ruthless warfare of the early days of the iron and steel industry has disappeared, and in its place, by reason of the attitude of Judge Gary more than anyone else, a condition has been produced among competitors in the iron and steel business, and I believe in many other industries, that never before existed.

MR. DICKINSON: So much of his answer is objected to as speaks of things done and said by Judge Gary, and the opinion and conclusions of the witness as to their effect upon trade, the question having been as to what was the policy of the company.

Q. Was this policy of Judge Gary supported by Mr. Morgan while he lived?

A. Most heartily.

MR. DICKINSON: This is objected to because it does not indicate whether it refers to the policy of the company referred to in the foregoing question or the acts and conclusion of the witness as to what Judge Gary had done and the effect of

these acts, and it is therefore excepted to as irrelevant and as incompetent.

THE WITNESS: This was the policy of the company.

By MR. LINDABURY:

Q. Mr. Bacon, was this policy supported by you while you were on the finance committee?

A. It most certainly was.

Q. Did it have the complete support of the executive committee and all its members at the beginning?

A. As to whether it was the policy of the executive committee?

Q. All the members?

A. While I was a member *ex officio* of the executive committee in the beginning, I hardly feel competent to speak for all its members.

Q. Very well. Then, since the finance committee came into control, and during the time you were a member of the finance committee, from 1903 on to 1905, was this policy supported by the finance committee, and was it the policy of the company?

A. Yes.

MR. DICKINSON: This is objected to as self-serving and incompetent.

By MR. LINDABURY:

Q. Did the execution of this policy, with the effect that you have mentioned, result in suppressing competition?

MR. DICKINSON: This is objected to as incompetent and because it calls for the opinion of the witness upon a general proposition, not showing any proven state of facts in respect to any particular kind or character of competition at any particular time.

THE WITNESS: The opinion of the finance committee——

By MR. LINDABURY:

Q. So far as your observation has gone, did it result at all or to any extent in lessening competition?

MR. DICKINSON: This is objected to because it calls for a conclusion of the witness based upon his observation; it is not

proven or shown what his observation is, and upon what facts the witness would base any such conclusion, and it is incompetent.

THE WITNESS: The opinion of the finance committee, the management of the Steel Company, and my own opinion is that competition, fair and reasonable competition, legitimate competition, has steadily increased since the formation of the United States Steel Corporation.

MR. DICKINSON: It is objected to; it does not show what the witness would regard as fair competition or legitimate competition, and as irrelevant, incompetent and self-serving.

By MR. LINDABURY:

Q. Has it been the intention of the finance committee or of yourself or of the Corporation or of any member of the governing board of the Corporation at any time to suppress competition?

MR. DICKINSON: This is excepted to as incompetent, calling for a mere conclusion of the witness and not offering any facts upon which a conclusion may be based.

THE WITNESS: To the best of my knowledge and belief it was never intended by anybody connected with the company.

By MR. LINDABURY:

Q. Has any competitor of the Steel Corporation failed in business since the Steel Corporation was formed, so far as you have heard?

A. That is a pretty big question.

Q. I only ask for what you may have heard or know?

A. Has any competitor of the Steel Corporation failed? I don't know that I know what you mean by failed in business.

Q. Gone into bankruptcy. No matter if you don't understand. Do you recall any?

A. I confess that I do not recall the names of any that have gone into bankruptcy.

Q. Has the Steel Corporation at any time or in any place attempted to drive a competitor out of business so far as you know or are informed?

MR. DICKINSON: This is excepted to as incompetent, because calling for a mere conclusion of the witness, not showing any facts or circumstances in respect to a particular competitor, or anything that was said or done in respect to the matters involved in the question upon which a conclusion is asked.

THE WITNESS: Not so far as I know.

By MR. LINDABURY:

Q. Has the Steel Corporation ever sold at a price below its ordinary price in any particular locality for the purpose of driving a competitor out of business in that locality, or of getting his customers, so far as you know?

MR. DICKINSON: That is excepted to as incompetent, the witness not showing that he has any knowledge of the question of sales, or in respect to any particular period of time.

THE WITNESS: Not so far as I know. I am perfectly frank to admit I have no means of knowledge of prices in any particular place.

By MR. LINDABURY:

Q. Has it ever been the policy of the Corporation to do that?

A. Certainly not.

MR. DICKINSON: That is excepted to because calling for a conclusion of the witness, and for an opinion, and not calling for facts or the basis upon which an opinion can be formed.

THE WITNESS: Never while I was a member of the finance committee.

By MR. LINDABURY:

Q. Mr. Bacon, at a meeting of the finance committee held on the 1st of November, 1904, at which you are recorded as having been present, there is this entry in the minutes:

"The President brought up the question of making some arrangement with foreign producers in regard to the price of rails to be sold in neutral markets. After a full discussion the question was referred to Messrs. Gary and Corey, with power."

Do you remember that incident?

A. Yes; I remember it very well.

Q. Please tell us how that resolution came to be passed, and what was intended?

Mr. Dickinson: I object to that as being incompetent.

A. It was toward the end of a period of low prices, and the questions discussed at that meeting were the policy of the company. I won't make a long story of it, but I remember that Mr. Corey, who was then president, believed that some arrangement should be made with the foreign manufacturers, and that the matter was referred to a committee of two, as I recollect it, the president and Judge Gary. I have a very distinct recollection that the reason of that was in order to sidetrack the proposition in which the finance committee as a whole did not believe and never intended to carry out.

Mr. Lindabury: That is all. Your witness.

(Thereupon a recess was taken until 2 o'clock p. m.)

AFTER RECESS.

ROBERT BACON,

the witness under examination at the taking of recess resumed the stand.

CROSS EXAMINATION

By Mr. Colton:

Q. How long were you a director in the Illinois Steel Company before you became a director in the Federal Steel?

A. My recollection is it was some time in 1898 I became a director in the Illinois Steel. I forget the month; I shall have to turn to the record.

Q. Just in a general way.

A. Perhaps a year and a half, or something like that; my recollection is not accurate upon that.

Q. Now, J. P. Morgan & Company had or had not been a

stockholder or bondholder in that company for some time prior thereto?

A. I do not think they were stockholders; there may have been some purchases of bonds or selling bonds for the company, or something of that kind. My recollection is not very clear about that.

Q. When did they become stockholders or bondholders in that company, either J. P. Morgan himself or J. P. Morgan & Company?

A. I cannot answer that. I should have been under the impression that J. P. Morgan & Company were not stockholders.

Q. Were they stockholders at the time you were a director in the Illinois Steel Company?

A. I shall have to plead ignorance of that; I really do not remember.

Q. You were a stockholder at that time, were you not?

A. I believe not, except to qualify as a director. I have no recollection of having any interest in the Illinois Steel, other than the nominal one to qualify me as a director.

Q. Your answer as to when they became stockholders or bondholders is that you do not know? Is that it?

A. That I am afraid is true. I am unable to answer that until I can do it accurately, and I cannot do that now.

MR. LINDABURY: Not only that, but he said he did not know whether they were or not.

BY MR. COLTON:

Q. Were you there representing J. P. Morgan & Company's interests?

A. I probably should not have been if I had not been a member of the firm of J. P. Morgan & Company, but I do not think I can hardly say I represented their interests there, because I do not think it was necessary to have their interests represented or contemplated.

Q. J. P. Morgan & Company is a partnership, is it not?

A. Yes.

Q. And always has been?

A. Yes; that is, under different names.

Q. And were you speaking for the various partners of J. P. Morgan & Company when you were speaking about the purposes for which the company was organized, as well as for the directors of the Federal Steel Company?

A. I believe anything I stated about the purposes of the formation of the United States Steel Corporation were the views of all the members of the firm of J. P. Morgan & Company.

Q. And you were pretty familiar with the views of J. P. Morgan & Company in the formation of consolidations of the character of the United States Steel Corporation?

A. I believe I was so familiar.

Q. And have been since 1895, when you became a member of that firm?

A. I believe so.

Q. I would like to call your attention to the following, upon which I will ask you some questions. I will read from the record, Volume I of the testimony, pages 339 and 340, and ask you some questions thereon.

MR. LINDABURY: You mean of exhibits?

MR. COLTON: No, of the record itself, the testimony. This is a letter written by Mr. Coster, February 26, 1898, addressed to Messrs. J. W. Gates and E. H. Gary, the Waldorf-Astoria, New York City. Who was Mr. Coster?

THE WITNESS: He was a member of the firm of Drexel-Morgan & Company and J. P. Morgan & Company.

BY MR. COLTON:

Q. And he had considerable to do with consolidations up to the time of his death?

A. He did; all the details of the consolidations.

Q. They were largely in his hands?

A. Largely in his hands.

Q. And he knew about the purposes for which the consolidations were formed, as much as any one?

A. I should think he was quite as competent as I to speak for the firm of J. P. Morgan & Company.

Q. I will continue. (Reading:)

"Dear Sirs:

"I have now in my possession and have carefully considered the reports of the chartered accountants relating to all of the companies whose properties have been offered for sale to a new company proposed to be formed. As you have examined the figures relating to the business of most of these companies for the last three years, I need hardly say that I am not only surprised but disappointed with the result, especially for the year 1897. It is perhaps true, as you claim, that the accountants have looked at some questions strictly from a bookkeeper's standpoint and have been somewhat illiberal in relation to the showing of profits, but in the main I think they have been accurate and fair and that in no reasonable way could the figures be materially changed. The books of most of these companies show a good profit for 1895 and 1896 and some of the companies were very successful in 1897; but the aggregate of the profits for 1897 were surprisingly small in comparison with previous years and with what it was expected.

"In view of the poor showing that is made as a whole for 1897, the proposed investment is not desirable and outsiders will not be disposed to take it.

"As we have expended a very large sum of money and devoted much time to the business, we are sorry the plan cannot be perfected as we intended, but I feel certain the manufacturers will understand it was not our fault.

"Having been brought into close contact with the business of these companies and with many of the leading manufacturers, it may not be out of place to suggest, first, the difference between the profit showing of 1897 and previous years is demonstration that some arrangement whereby prices can be maintained is absolutely necessary to success, and, secondly, that if the manufacturers will make some arrangement whereby the time named in the contracts which have been given can be extended for a few months, and prices in the meantime maintained so that for the year 1898, or if possible a substantial part of the year, the net earnings will amount to as much as they did in previous years, the proposed arrangement can

probably still be carried out on about the plan we have been considering.

"As you know, I have given these matters a great deal of time and it is with the deepest regret that I am obliged at the present time to decline to proceed further.

"Yours very truly,

"C. H. COSTER."

Were you connected with the proposed wire consolidation which J. W. Gates, E. H. Gary and J. P. Morgan & Company then had under consideration?

A. Only as a member of J. P. Morgan & Company.

Q. Were you familiar with the then existing thought in Coster's mind that preceding the formation and consolidation you should have a price agreement?

MR. LINDABURY: I object to that question, first, because it is not cross-examination; second, it is irrelevant, and, third, because there is not any evidence that Mr. Coster had that thought in mind.

THE WITNESS: I do not recollect. I was pretty familiar with all the thoughts of importance that Mr. Coster had in mind, and general principles, but I have no recollection of that particular fact.

By MR. COLTON:

Q. Do you know that Mr. Coster was active in the formation of the National Tube Company?

A. I do.

Q. Do you know whether Mr. Coster had under consideration the proposed formation of the American Bridge Company before his death?

A. No, he hadn't.

Q. Do you know that the formation of the United States Steel Corporation was preceded by such agreements or arrangements whereby prices might be maintained in certain products as that described in the Coster letter?

A. I have no doubt they had existed for a great many decades.

Q. Don't you know that the plate agreement was formed in November, 1900?

A. No, sir.

Q. Don't you know that there was a conference between Mr. Schwab and Charles Steele and J. P. Morgan & Company about a week before that agreement was formed?

A. No, sir.

Q. You testified so far as you knew that there was no competition between the concerns going into the Federal Steel Company?

A. Into the Federal Steel Company, yes.

Q. Don't you know as a matter of fact that just a short time before the Federal Steel Company was formed, that the Lorain Steel Company was enlarging its girder rail mill and made out of it a rail mill capable of manufacturing standard rails, capable of turning out 1250 tons a day of standard rails?

A. The figures that you have read me I am not familiar with.

Q. Do you know that the Lorain Steel Company was enlarging its rail mill just shortly prior to the time the Federal Steel Company was formed?

A. My recollection of the Lorain Steel Company was that they were in an unfinished condition, that they were manufacturing girder rails, and I do not recollect that just prior to that they were enlarging their rail mill.

Q. Do you know that the Lorain Steel Company was manufacturing some standard rails at the time the Federal Steel Company was formed?

A. I recollect; I think that there was a small and insignificant capacity for standard rails.

Q. Do you know for what purpose the rail mill of the Lorain Steel Company was enlarged at or about the time of the formation of the Federal Steel Company?

A. At or about the time? You mean before the consolidation or afterwards?

Q. I said at or about the time.

A. At or about?

Q. Yes.

A. As to the intentions of what they did before, just preceding the consolidation, I had no knowledge, because it was not in the control of anyone with whom I was in touch at all.

I imagine that if such an enlargement had been begun just prior to the consolidation, that it would have been wise and economic not to stop in the middle of it, but to go ahead with the enlargement.

Q. But as a matter of fact you do not know whether the Lorain Steel Company had a standard rail mill or not at the time of the formation of the Federal Steel Company?

A. I told you that I believed they had a small, insignificant capacity for standard rails.

Q. What I am asking you, though, is whether they had a rail mill capable of turning out standard rails at the time of the formation of the Federal Steel Company?

A. I believe that—I repeat my same answer—I believe they had a capacity for a very small amount.

Q. Do you know anything about what the actual capacity of that standard rail mill was?

A. I know it was very small.

Q. Do you know whether it was less than 1,250 tons a day?

A. I do not know the figures.

Q. Do you consider 250,000 tons a year small?

A. I do not know the figures.

Q. And you do not know for what purpose the rail mill of the Lorain Steel Company was enlarged?

A. I can only answer as I did before, the same question.

Q. And you do not know whether, after the formation of the United States Steel Corporation it was customary, during the year 1901 to transfer orders to the Lorain Steel Company in order that it should manufacture standard Tee-rails instead of the Carnegie Company manufacturing said rails to a certain extent?

MR. LINDABURY: I object to that as a *non sequitur*.

A. My recollection is that there being a small rail mill at Lorain, certain orders were executed there because of its territorial position, because of its nearness to the markets; I have a recollection that a certain small amount was executed of standard rails there at Lorain.

Q. And you cannot give me any idea of what you consider a small amount?

A. I think it would be difficult for me to do that.

Q. You could not express it in tons?

A. I am not familiar with tonnage figures; I do not pretend to be a steel expert.

Q. You spoke of the Federal Steel Company lacking finishing mills. Do you know anything about what sort of finishing mills it lacked?

A. They lacked pretty much all the finishing mills which were afterward acquired, the Sheet Steel and the Steel Hoop and the other one of that group——

MR. LINDABURY: The Tin Plate?

THE WITNESS: The Tin Plate was the other one.

By MR. COLTON:

Q. I was just asking for information; just to see what you know.

A. Well, I know that the Federal had practically no steel and wire output, and all the kindred products, and that they had practically no structural plant. There was one mill, one little one, out in Chicago, that is my impression, and that it belonged to the Illinois Steel Company, but substantially they had no structural plant; they had no tube mill. I think if you gave me a little time I could recall them all.

Q. Go ahead; you will have all the time you want.

A. If you want me to, I will try to be a little more specific. I think that is substantially all of the standard things. Of course there were additional small mills, things which were by-products, different parts of all these component companies which I have mentioned and which I cannot go into in detail; I could not go into any great detail if I tried.

Q. Were you ever familiar with the subject?

A. No.

Q. You never knew much about it of your own knowledge?

A. About what?

Q. About the plants of the Federal Steel Company.

A. Only as a man who was interested as a director, who had every opportunity to learn about it, but not as a technical steel man.

Q. You had a great many other interests at that time?

A. I had.

Q. Do you know whether the Federal or any of its constituents could manufacture wire rods at the time of the formation of the Federal Steel?

A. There was a little rod mill at Joliet, was there not?

Q. Didn't that have a pretty good capacity in wire rods?

A. I repeat my former answer.

Q. Do you know how many thousands of tons they could turn out?

A. No, sir. I told you I was not up in figures.

Q. When you spoke of things being small, what basis do you use for being small?

A. I mean they are insignificant factors in the policy of the company.

Q. Do you mean an insignificant wire rod mill as compared with the whole wire rod production of the American Steel & Wire Company of New Jersey, or as compared with such a company as the Union Steel Company?

A. I can only repeat what I said before. I do not mean any of those things.

Q. You cannot give me any idea of what you do mean by a small wire rod mill?

A. Not in figures.

Q. Nor in comparison with any other company?

A. I have not the figures of the other companies in mind.

Q. And never did have them?

A. The actual output of the other rod mills, I do not believe, ever made a lodgment in my mind. Undoubtedly those things were reported to me when I was on the boards of those companies, in discussion of any question that might come up in relation to them, but they have gone from my mind now.

Q. You spoke of their having a small structural mill. Is that the Universal Construction Company?

A. I forget the name.

Q. Do you know anything about the size of the structural mill?

A. In Chicago? That is the one of which we are speaking?

Q. Yes.

A. If you mean figures of output, no, I do not.

Q. Do you know what its allotment was in the structural pool?

A. I do not know whether there was any structural pool.

Q. Well, would you say that a three per cent. allotment out of all the structural mills was large or small?

A. Three per cent.? I do not remember how many there were at that time. I should think—these hypothetical questions are conundrums, of course.

MR. LINDABURY: I will ask counsel to state before the witness answers whether he means three per cent. of the total production of the country or three per cent. of those who happened to be in the assumed structural pool?

MR. COLTON: Three per cent of the structural production of the country.

THE WITNESS: Well, I should think that would be fairly large for one structural mill at that time.

By MR. COLTON:

Q. Now, did the Illinois Steel Company have a cotton tie mill?

A. My recollection is that they did make a few cotton ties.

Q. By a few cotton ties what do you mean?

A. If these questions are for the purpose of proving what I know or what I do not know, I might as well tell you that I am not familiar with the figures and outputs of those different mills.

(By request the pending question was repeated by the stenographer.)

By MR. COLTON:

Q. (Continuing) I would like to get answers.

A. It is difficult for me to answer that question.

Q. If the Illinois Steel Company in 1899 or 1900 furnished half of the whole production of the United States would you call that small?

MR. LINDABURY: I object to that as irrelevant, immaterial and not cross-examination.

THE WITNESS: It depends upon what the production of the United States was.

By MR. COLTON:

Q. Then you were not speaking in relation to this percentage of control in the production of cotton ties, but the percentage the cotton ties would represent of the total output of the Illinois Steel Company.

A. I was trying to answer your question.

Q. Then you cannot say whether you consider half the entire production of the United States in 1899 small or large in cotton ties?

MR. LINDABURY: The same objection.

THE WITNESS: I repeat my former answer, that it depends a good deal on what the production was, whether it was large or small.

By MR. COLTON:

Q. If the American Steel Hoop Company could afford to pay the Illinois Steel Company $150,000 a year to keep out of the cotton tie business, would you consider that an insignificant business?

MR. LINDABURY: I object to that question as irrelevant and immaterial and based upon an unproven assumption of fact.

MR. COLTON: It is all in the record.

MR. LINDABURY: It is not in the record in a way that proves it.

MR. COLTON: It is in the record of the minutes of the Carnegie Steel Company, after that company was taken over by the United States Steel Corporation, and stated to be a fact by the president of that company.

MR. LINDABURY: That don't prove it.

THE WITNESS: Did I use the word "insignificant" in this relation?

Q. I just want an answer to that question; that is all. I did not say you used it.

A. I should think that "insignificant" was not the word to use in that connection.

Q. The Illinois Steel Company had a large standard rail mill, did it not?

A. The Illinois Steel Company?

Q. Yes.

A. Large for that time, yes.

Q. And the Carnegie Steel Company had a large standard rail mill, did it not?

A. Yes, that is my recollection.

Q. And the National Steel Company had a large standard rail mill, did it not?

A. They were going to have one.

Q. Didn't they in 1900 have a standard rail mill capable of turning out 50,000 tons a month?

A. I am not familiar with the figures.

Q. And the Illinois Company and the Carnegie Company both manufactured light rails, didn't they?

A. I cannot speak by the book. My understanding is that they both manufactured standard rails.

Q. And the Illinois Company and the Carnegie Company and the American Steel Hoop Company all manufactured merchant bars, did they not?

A. I could not confirm that of my own knowledge.

Q. Then you do not know whether they really needed the finishing mills of the American Steel Hoop Company or not, do you?

A. Yes, I do.

Q. Which one of the finishing mills of the American Hoop Company did they need?

A. They needed them all.

Q. When they had the same sort of capacity that the American Steel Hoop Company had?

A. That is a question of amount, that is all; but looking to the future, they needed that kind of finishing mill to a very much greater extent than they had.

Q. By needing it, you do not mean to say they did not have the kind of mills the American Steel Hoop Company had, do you?

A. I only used your own expression; you said it, not I.

Q. You said they lacked of finishing mills of the American Steel Hoop Company. I want to know what sense you use that in.

A. That was not what you asked me. You said what they needed.

Q. What did you mean by saying that the Illinois Steel Company lacked such finishing mills as the American Steel Hoop Company had?

MR. LINDABURY: He did not say that. I object.

THE WITNESS: Did I say that?

By MR. COLTON:

Q. I understood you to say that.

A. I don't think so.

Q. Did they lack such finishing mills as the American Steel Hoop Company had?

A. The Illinois Steel Company?

Q. Yes.

A. They did to the extent that they could use it after they had gone into the Federal Steel Company. You are asking me now about the Illinois Steel Company, which is a step further back.

Q. Did the Federal Steel Company lack——

A. (Interposing) That was not what you said.

Q. Well, did the Federal Steel Company lack such finishing mills as the American Steel Hoop Company had?

A. If you want to get the facts, please ask me what you mean. The Federal Steel Company did lack in amount practically all the finishing mills which I have enumerated and some others in order to make a complete manufacturing plant.

Q. But they had the same sort of finishing mills as the American Steel Hoop Company?

A. To the extent that they may have duplicated some of the products of some other mills in a general way.

Q. Do you know whether the production of the cotton tie mill of the American Steel Hoop Company exceeded the production of the Illinois Steel Company in cotton ties?

A. I am not familiar with the figures.

Q. And do you not know whether the production of the American Steel Hoop Company in merchant bars exceeded the production of the Federal Steel Company in merchant bars?

A. I am not familiar with the figures.

Q. Do you know whether the Carnegie Company had a merchant bar mill?

A. I do not know of my own knowledge.

Q. Do you know whether the Illinois Steel Company was the second largest producer of plates in this country?

A. The Illinois Steel Company? I do not know of my own knowledge.

Q. Do you know whether the Federal Steel Company at the time it was taken into the United States Steel Corporation with its constituent companies was the second largest producer in plates in the United States?

A. I do not know.

Q. Do you know whether the National Steel Company and the Federal Steel Company manufactured substantially the same products or not?

A. My belief was at that time that they manufactured somewhat the same products.

Q. And that the Carnegie Steel Company manufactured practically all the products manufactured by the National Steel Company?

A. I should not be able to go into that in detail and answer that accurately.

Q. Is that all the answer you can give?

A. That is the truth.

Q. I know that, of course it is. That is all you can say on the subject?

A. That is my answer. That is perfectly true.

Q. What do you know about the proposed mortgage in order to finance and make more complete the Federal Steel Company?

A. Well, I do not recollect the details of it, but I know that a mortgage was created for that purpose to cover an issue, if I am right, of forty-five or fifty million dollars.

Q. Do you recollect the time?

A. The time that it was done?

Q. Yes, approximately?

A. It was done in 1899 or 1900, I don't remember when; it was some time after the formation of the Federal Steel Company.

Q. Was the mortgage up for consideration on one or more occasions?

A. I do not know that I can answer your question until I know what you mean by "up for consideration."

Q. Well, was the issuance of a mortgage under consideration by the directors of the Federal Steel Company on one or more occasions?

A. I should say it was considered a great many different days.

Q. It was considered a great many different days, but as to time, did it extend over a month?

A. The consideration of it?

Q. Yes.

A. I am not trying to be captious now.

Q. Did the consideration take place within a month?

A. No, I think that it was at various times. I am rather inclined to think that the whole subject of financing further any extension of the Federal Steel Company was considered—I am trying to answer your question honestly—I think it was considered on many occasions.

Q. How far back of the formation of the United States Steel Corporation was it considered?

A. I cannot answer that question. I really do not remember. It might have been considered at any time during the life of the Federal Steel Company, because after it was authorized it was always available, it could have been used?

Q. It was authorized?

A. After it was authorized, I say. Authorized. I don't know that I am strictly right in that term. After it was prepared and ready—there was no issue authorized, there were no purposes definitely for which it could be used or sold, so that I suppose "authorized" is hardly the word.

Q. You spoke of Mr. Frick's wanting to sell the Carnegie properties?

A. Yes.

Q. What did you hear about that?

A. I simply heard the fact.

Q. Do you know whether that is the same occasion on which Mr. H. H. Rogers obtained an option on the Carnegie properties?

MR. LINDABURY: I object. I do not recall that there is any evidence that justifies that statement.

MR. COLTON: Yes.

MR. LINDABURY: Where is it?

MR. COLTON: In Mr. Schwab's testimony, if you want to refer to that.

MR. LINDABURY: No, Mr. Schwab didn't say so. Mr. Schwab testified that Mr. Frick tried to sell to Mr. Rogers.

MR. COLTON: No, he testified there was an option.

THE WITNESS: I have no recollection of that in that form.

MR. LINDABURY: Do not assume an option, because that was not the evidence.

BY MR. COLTON:

Q. You have no recollection of Mr. H. H. Rogers being connected with the alleged desire of Mr. Frick to sell the Carnegie property?

A. Yes; I have a recollection that in some way or other Mr. Frick did talk to Mr. Rogers, who was one of our directors.

Q. When did that occur, approximately?

A. My recollection is not accurate about that. He spoke to others at the same time; I am not trying to confine it to that; I do not know any way of limiting it to any conversations or negotiations with Mr. Rogers. I should have said a year and a half or so, or a year before; my recollection is not good on time, but in my opinion it was before the so-called Moore option, the Moore and Frick option. There may have been subsequent conversations between Mr. Frick and Mr. Rogers on the same subject.

Q. Was that taken up by the directorate of the Federal Steel?

A. That particular time?

Q. Yes.

A. When you say taken up——

Q. Well, considered.

A. I still want to be accurate in answering that. No doubt it was considered by all the directors of the Federal Steel individually and informally. I have no recollection of any

formal action being taken by the Federal Steel directors as a whole.

Q. Then you do not know who took the initiative in that transaction in so far as there was a transaction between Mr. Frick and Mr. Rogers?

A. I should have stated it must have been Mr. Frick.

Q. On what do you base that?

A. Because he is the only man that could have spoken for the Carnegie Company.

Q. Could not Mr. Rogers have asked Mr. Frick for an option on his company?

A. He might have.

Q. Then it is a matter of reasoning?

A. It is a matter of reasoning; I have stated that I have no accurate knowledge of the fact.

MR. COLTON: I except to your testimony on this subject on the ground that it is hearsay and based on reasoning and a matter of argument.

MR. LINDABURY: What is hearsay?

MR. COLTON: The whole thing.

MR. LINDABURY: He has not said any option was given to anybody or asked by anybody.

MR. COLTON: I except to his testimony in respect to transactions between H. H. Rogers and Mr. Frick, and to the discussion thereon as hearsay, and to his testimony that it must have been Mr. Frick who offered to sell the Carnegie properties.

THE WITNESS: I told you it was hearsay myself. I do not know that Mr. Rogers—in fact, I do not believe there was any option.

MR. LINDABURY: That is all very good. You are the only one who has proven by this witness that Mr. Rogers had anything to do with the transaction, and you are excepting to evidence that you brought out.

THE WITNESS: Mr. Frick and Mr. Rogers were very intimate friends, and undoubtedly talked about these things, which were very near to both of them.

By MR. COLTON:

Q. Do you know anything about the agreement that there was between the Minnesota Iron Company and the Consolidated Iron Mines Company that they should not compete with one another in the acquisition of ore properties?

A. No, sir.

Q. Can you give approximately the length of time prior to the formation of the Steel Corporation that the Frick option was discussed?

A. How long before the formation of the Steel Company the Frick option was discussed?

Q. Yes, the Moore-Frick option, I should call it, to distinguish it from the other.

A. The time it was given? It is a matter of record, is it not?

Q. Who were present, as far as you know, at that discussion of the Moore-Frick option?

A. Discussion by whom?

Q. I understood you to say it was discussed to some extent among the officers of the Federal Steel.

MR. LINDABURY: He didn't say so; he spoke of that——

MR. COLTON: I will bring it out.

MR. LINDABURY: I know, but you mis-recite the evidence. He said he heard about that from Mr. Baker.

By MR. COLTON:

Q. Did Mr. Baker have any conversation with you in regard to the Moore option?

A. I think I discussed that with Mr. Baker. I think I did personally. I went to see Mr. Baker constantly every day and it would be strange if I did not.

Q. Was Mr. Baker a party in any way to that option?

A. Not that I know of.

Q. In what connection did he bring it up?

A. I really do not know; a matter of interest, probably, general interest.

Q. Was the option that Mr. Moore had on the Carnegie properties considered by J. P. Morgan & Company?

A. Considered by them? What does that mean?

Q. The word "considered" is sufficiently clear in meaning. I will ask to have the question read.

A. It is not clear to me, because it may have a very technical sense.

Q. I am putting it in the ordinary sense.

A. That is the only thing you are using in the ordinary sense, then. Mr. Morgan probably knew of the inquiry, and it was offered to him, or proposed, that he should buy the Carnegie Company, and he did not desire to do it.

Q. Do you know anything about when and where it was offered to Mr. Morgan?

A. At the time—you asked me practically that same question before—at the time it was in existence; I am not familiar with the time exactly—about a year or so, was it not? I do not know; some time before.

Q. Well, conversation did take place between Mr. Morgan and others in respect to this Frick option, did it not?

A. Undoubtedly.

Q. Were you present when that conversation took place?

A. I may and may not have been; I have no recollection of any specific negotiations, or anything of that kind. I might or might not have been present.

Q. At the first interview that took place between Mr. Schwab and Mr. Morgan at which you were present, was John W. Gates also present?

A. I would not be able to fix that as the first one or not; I was present at certain of those occasions when they were there.

Q. Were you present prior to the formation of the United States Steel Corporation at an interview at which there were also present J. P. Morgan and Charles M. Schwab and J. W. Gates?

A. Yes.

Q. What was discussed at that interview?

A. The purchase of the Carnegie Company.

Q. At that interview was a plan formulated relating to how the property of the Carnegie Company should be purchased?

A. It is difficult to answer no to that; I should think it

was undoubtedly discussed, because that was the subject matter, was it not? It was impossible that it could not have been discussed. This was a plan—I should think I have to modify that answer because a plan is too specific and definite.

Q. Modify it in any way you like.

A. The whole subject was discussed, but I really want to be accurate in answering, as to what you mean by a plan, because that is technical.

Q. I did not use "plan" in any technical se

A. What do you mean; the proposition?

Q. The proposition.

A. I answer yes.

Q. The subject of the purchase was considered?

A. Yes.

Q. But the subject of the purchase or proposal—you say there was a proposal to purchase at that time?

A. There was a proposal.

Q. To purchase the Carnegie Steel Company?

A. To sell.

Q. Was there both a proposal to sell and a proposal to buy?

A. I do not think there was any proposal to buy at that time; proposal, that would mean on behalf of the buyer. I do not think there was any conclusion arrived at at that meeting.

Q. Do you know whether Mr. Morgan sent for Mr. Schwab or Mr. Schwab sent for Mr. Morgan?

A. That would be a pretty hard question to answer. I do not believe anybody could answer that, even Mr. Schwab, because I think that it is capable of two or three different interpretations. My idea would be that the subject being mentioned to Mr. Morgan possibly by Mr. Gates, Mr. Morgan expressed a willingness to see Mr. Schwab; it was transmitted to Mr. Schwab, and in his language, meant Mr. Morgan sent for him, so that both may be true, I should think. It is a pretty hard thing to answer.

Q. Was anything said at that interview at which you and Mr. Morgan and Mr. Gates and Mr. Schwab were present as to the method by which Carnegie should be paid?

A. Should be or might be or could be?

Q. Either one of those.

A. That must have been part of the whole subject.

Q. Do you know whether the proposal at that time was to pay in bonds?

A. Nobody made any proposal to pay anything.

Q. How far did the transaction proceed at that first interview?

A. It was all very indefinite; it was simply a confirmation of the impression that Mr. Schwab had made upon Mr. Morgan that the time had arrived and the price warranted, and that the situation justified, and the future possibilities of the cost of production justified the purchase by Mr. Morgan of the Carnegie Company.

Q. What price warranted the purchase?

A. The actual value based upon that sort of thing.

Q. Was there any price discussed of the Carnegie properties at that interview?

A. I am not sure whether Mr. Carnegie had named the price at which he would sell at that particular interview. It is very difficult to segregate any one particular interview. I am not sure.

Q. Were any other companies discussed at that interview, other than the Carnegie Company?

A. Undoubtedly the general advisability and necessity of purchasing other finishing mills and completing the manufacturing plant was discussed.

Q. You spoke of various estimates this morning in the course of your examination. What estimates did you refer to?

A. You will have to make it more specific than that. I have no recollection as to what you refer to.

Q. I will pass that. I will find the place and ask you about that.

MR. LINDABURY: I recall it now. Shall I mention it?

MR. COLTON: Yes.

MR. LINDABURY: You stated on this Monday it was resolved to go ahead with the thing provided the estimates as to the different properties were substantiated. Isn't that it.

MR. COLTON: Yes.

By Mr. Colton:

Q. What were those estimates?

A. The estimates of earning capacity and business conditions, as to whether the estimates—I think I used it in this sense—of Schwab, as to the possibility of reduction in the cost of production, and of other men as to other elements of the whole situation were corroborated, that is to say Mr. Morgan took the judgment largely of these men who were experts in their several provinces, and I think in referring to those estimates I meant the opinions of those men as to what could be accomplished by the creation of such a plan, that is the purchase of these different mills at that time in the interest of the Federal Steel Company, who was the father of the whole thing.

Q. Did you refer also to the ore estimates?

A. I am not sure that any specific figures of the ore estimate had been made that way. That was a subsequent purchase. I do not think they were made at that time.

Q. You know, do you not, that the National Steel Company had ore properties?

A. Of course the ore which was owned by the several companies under consideration was naturally estimated to use that word again; some opinion was expressed about them; they would not have been bought if they had no value in the opinion of the people present.

Q. All I meant was that these ore estimates of various companies were among the estimates that were considered, were they not?

A. They had to be; they formed the basis of the manufacturing.

Q. You spoke this morning of Mr. Hewitt being connected with the American Bridge Company, did you not?

A. Not exactly in that way. I think that was in response to some question. I think I said my recollection was he was interested in a small structural plant which had gone into the American Bridge Company. If I am not mistaken that is what I said.

Q. Then as I understand it he was interested in one of the

plants that were taken over by the American Bridge Company.

A. Yes; I believe so, a very small one.

MR. LINDABURY: The witness did not say whether he became in that way interested in the Bridge Company. He did not know and I do not know. I want you to understand his attitude as I understand it.

MR. COLTON: I do not want to contradict him.

THE WITNESS: I don't know. I expressed it this morning as an impression.

By MR. COLTON:

Q. Have you any impression as to whether he continued his connection with the American Bridge Company after its formation?

A. I don't know.

Q. You do not know, then, the part he took in the formation of the American Bridge Company?

A. No; only I think that undoubtedly he was constantly at that time in touch with Mr. Morgan, and that was all. I think that undoubtedly his advice was taken on general subjects, but I do not think he had any substantial interest.

Q. Do you know whether he was consulted at all in the consideration of the purchase of the various properties that came into the American Bridge Company?

A. No; I should doubt that specifically.

Q. Did you know or do you know of the system of contracts whereby there was obtained from the sellers of the various properties that went into the American Bridge Company contracts to the effect that they should not engage in the bridge business for a period of twenty years?

A. No, I do not.

Q. And you do not know whether Mr. Hewitt had anything to do with those contracts or not?

A. I do not know that there were such contracts.

Q. The record shows that there were such contracts.

A. He had really a very small interest, and I do not think was a factor.

Q. You spoke of the Tube project as not being a very important factor, did you not, this morning?

A. I do not think that is my language.

Q. What did you say about the Tube project? Was it an important factor?

A. No.

Q. It was not?

A. No, but mind you, I want to be very accurate about that. You said a very important factor. That was not my language, if I recollect it.

Q. You do not consider it a very important factor?

A. I do not consider it of any importance, did not consider it at that time a factor under consideration in the formation of the United States Steel Corporation.

Q. You were a director in the National Tube Company, were you not?

A. I was.

Q. I haven't the list of directors who were present at this meeting, but I will read it to you and see what you recall as to the facts therein stated, and then will ask you certain questions thereon. This is a directors' meeting of January 15, 1901, of the National Tube Company, page 409, Volume II of Government Exhibits. Mr. Converse was president of the National Tube Company at that time?

A. I believe so; there was no change made, I think.

Q. (Reading):

"Mr. Converse said:

"You have doubtless read the manifold utterances through the various press channels which have appeared in most of the papers and press dispatches, respecting the alleged plans of the Carnegie Company to install and operate a tube works with a capacity of two hundred and eighty thousand tons per annum, more or less.

"As is well known, the tendency lately so conspicuous to establish a community of ownership or a unified control over great industries as the only available means of restraining destructive competition, led to the incorporation of various great companies. The same tendency, for the same reasons, led to the unity of control over great railroad systems because

they could find no other way of maintaining rates and preventing a cut-throat warfare which bankrupted the weaker ones, destroyed the profits of others and caused all manner of discrimination and uncertainty among patrons.

"The history of the iron and steel business from 1892 to 1899 showed that the wasteful and destructive competition which existed during that protracted period could not go on indefinitely without ruin to important properties and damage to manifold interests depending upon stability of prices.

"The only resource then was to consolidate and strengthen competing lines and to establish as far as possible a unified control under which there could be a systematic distribution of products and the maintenance of stable and remunerative rates for the benefit of all thus combined.

"During the eighteen months this corporation has run there has never been a time when it could not have manufactured to advantage and profit material in competition with nearly all of the numerous industrial groups including the Carnegie Company; but the policy of the management so far has been that, except forced by self-protection, this company would not displace a ton of its neighbor's product by entering any other lines than strict tubular goods. It has rigidly confined itself to this principle up to this time.

"Through our contract with the National Transit Company, by means of which that department of the Standard Oil Company has maintained its independence as a buyer of raw material, the Carnegie Company is now enjoying a trade in plates or strips at the rate of about one hundred and fifty thousand tons per annum, which is more than equal to any tonnage which the Carnegie Company has ever made for tubular purposes.

"From this it will be seen that the Carnegie Company interests have been protected through the care and friendliness of the Standard and National Companies, as thus described, and under the full belief, warranted by facts, statements and circumstances, that such an arrangement would fully satisfy the Carnegie Company in their implied demand for their full measure of steel tonnage for conversion into tubular products."

Do you recall that?

A. I do not recall that speech.

Q. Do you recall what was the means whereby "the Carnegie interests have been protected through the care and friendliness of the National and Standard Companies?"

MR. LINDABURY: I object; the statement assumes as a matter of fact something that is not proven and is disputed.

By MR. COLTON:

Q. You do not recall?

A. I answered that I did not remember.

Q. I will continue. (Reading)

"In all of the arrangements between the National Steel, Republic, American Sheet Steel, Tin Plate and others of the industrial steel groups, it has been the unwritten law that each group should confine itself to the fabrication of its own specialties and should voluntarily refrain from using constant surplus of material by the production of the special product of its neighbors. If this unwritten law is to be ruthlessly disregarded by the Carnegie Company it will of course have a broader significance than the mere competition with our own products."

Do you know to what the writer refers in the statement that "If this unwritten law is to be ruthlessly disregarded by the Carnegie Company, it will of course have a broader significance than the mere competition with our own products"?

MR. LINDABURY: You have read that three times into the record in ten minutes. I object to it first as not cross-examination, and second, that the witness has already answered that he knows nothing about it.

MR. COLTON: This is the first time I read that particular passage.

(By request, the stenographer repeated the last quotation read by Mr. Colton, and the question.)

THE WITNESS: I do not remember what unwritten law he refers to.

By MR. COLTON:

Q. Do you recall anything about the Conneaut project that Mr. Carnegie had announced in the papers at that time?

A. I remember the fact that there had been a great flourish of trumpets about it.

Q. You do not recall being present at any time when that was discussed by the directors of the National Tube Company?

A. I have no recollection of being present at any discussion of that subject.

Q. At any time?

A. I have no recollection of being present at any discussion of that subject.

Q. You have no recollection of the fact that Mr. Carnegie was going into tubes being referred to?

A. Referred to by whom?

Q. Referred to by anyone connected with either J. P. Morgan & Company, the Federal Steel, or the National Tube Company, prior to the formation of the United States Steel Corporation?

MR. LINDABURY: You mean casually or otherwise?

MR. COLTON: Casually or otherwise.

THE WITNESS: It was common talk; it was common, if you will look at the files of the newspapers. Nobody could help hearing of it.

By MR. COLTON:

Q. Well, do you recollect when you heard about it?

A. No, sir; I do not remember the date.

Q. At any time before the formation of the United States Steel Corporation?

A. Do I remember the date?

Q. No; do you recall any such discussion among any of the officers of any of these companies at which you were present, before the formation of the United States Steel Corporation?

A. Not as officers, the subject mentioned was discussed as it was published in the papers and discussed generally. I have no doubt it was talked of by me and by others, no doubt of it.

Q. With other directors of the National Tube Company?

A. They might have been directors and might not have been.

Q. Or the Federal Steel?

A. The Federal Steel probably yes, no doubt about it. I saw them every day, and it would be very strange if we did not talk about it.

Q. Do you recall that there was discussion in the papers at or about the time the United States Steel Corporation was formed of a resolution that was introduced in Congress to investigate the formation of the United States Steel Corporation?

A. No, I do not remember that.

Q. Do you recall that there was a statement issued on or about February 9, 1901, in which it was alleged to have been stated in substance by E. H. Gary that J. P. Morgan & Company were undoubtedly considering plans for the acquisition of the properties of some of the largest iron and steel companies in this country. "Presumably they will not make or authorize any official statement until the plans are perfected until probably there will be such ownership or control as to secure perfect harmony in the larger lines of this industry."

MR. LINDABURY: I did not quite catch the drift of that.

THE WITNESS: I should like to have the beginning of it read over, because I lost the thread.

(Here the stenographer repeated the pending question.)

THE WITNESS: The question is, is that a statement that was issued on or about February 9th by E. H. Gary, and do I remember that.

By MR. COLTON:

Q. Containing the substance of what I have just read?

A. No; I don't remember about that.

Q. You do not recall at that time any discussion about bringing perfect or permanent harmony, any discussion or talk about the method of securing perfect and thorough harmony among the lines of the industry?

A. Discussion in the papers? What kind of discussion?

Q. Discussion among the officers of the Federal Steel or of any of the companies with which you were connected at that time?

A. I do not think I can identify that.

MR. LINDABURY: If Mr. Gary made any statement of that kind we have nothing to conceal.

MR. COLTON: He makes a statement, and then he adds a good many things.

MR. LINDABURY: His statement ought to go in as a whole, not garbled.

MR. COLTON: I read the statement as it was; I didn't garble it.

THE WITNESS: I do not recall the statement.

MR. COLTON: There was introduced a resolution that Congress should investigate.

THE WITNESS: I do not even remember it; it is a long time ago.

By MR. COLTON:

Q. Mr. Bacon, you spoke of the fact that it developed that after you had secured the various properties other than the Rockefeller properties, that you needed the Rockefeller ore properties.

A. We needed more ore, ore reserves.

Q. Did you know at that time that the combination of the properties of the various subsidiary companies of the United States Steel Corporation other than the Rockefeller properties constituted about fifty per cent. of the known available ore in the Lake Superior district?

A. I am not familiar with the figures or the percentages.

Q. And you are not aware and were not aware at the time that a combination of both the properties taken up by subsidiary companies other than the Consolidated Wire Company and the ore properties which came in with the Consolidated Company constituted about 75 per cent. of the known ore supply of the Lake Superior District?

A. I do not think you mean the Consolidated Wire Company.

Q. Consolidated Iron Mines is the technical name.

A. Yes, but you said Wire Company.

Q. Lake Superior Consolidated Iron Mines.

A. Yes. Did I know that they constituted a certain percentage?

Q. Approximately, roughly 75 per cent.

A. I do not believe anybody knew it accurately.

Q. Did you know that accurate estimates were made of those properties by ore experts for Mr. Schwab shortly prior to the formation of the United States Steel Corporation?

A. It would be almost impossible for anybody to make accurate estimates.

Q. Do you know that the most accurate estimates that could then be made were made?

A. I rather doubt that.

Q. Do you know that estimates were made by engineers?

A. Undoubtedly.

Q. And do you know that the estimates showed that the Steel Corporation would control a very large percentage of the entire ore of the Lake Superior region if those estimates were true?

A. That the United States Steel Corporation would own a large percentage of those if it was true, yes; a large percentage.

Q. Did you know that it would be much greater than a majority if those estimates were true?

A. It depends upon which estimates you mean. Estimates were very wild in those days; they made all kind of guesses.

Q. What estimates do you refer to in which they made all kinds of guesses?

A. Everybody had estimates, everybody made guesses.

Q. I am referring to the engineers.

A. The official engineers' estimates?

Q. Yes.

A. I do not remember what they were.

Q. Are you referring to those?

A. I was referring to those amongst others.

Q. Which ones amongst others did make guesses, which ones among the engineers?

A. Everybody was making guesses.

Q. Mr. James Gayley, did he make guesses?

A. I have no doubt that he did.

Q. You do not know that he did?

A. Yes, I know.

Q. In what one?

A. Any estimate must have been a guess.

Q. Is that just a matter of reasoning?

A. No, it is a matter of fact, and you know it as well as I do.

Q. About the estimate of ore on the Mesabi Range?

A. In any deep level it must be more or less of a guess.

Q. You mean you could not arrive at any approximate estimate?

A. I have heard two men of absolutely equal ability and reputability and everything like that, have diametrically opposite opinions on the same subject.

Q. In 1901?

A. Did I know those gentlemen in 1901?

Q. No, did you hear two men in 1901 have diametrically opposite opinions on the quantity of ore in the Lake Superior region?

A. I was saying that in proof of my statement that nobody could estimate accurately on ore.

Q. That is what you base your answer on?

A. What?

Q. You base your answer on reasoning there, do you not?

A. I say it is a fact, it is not reasoning; it is a well-known fact. There was a great deal of difference of opinion.

Q. It was a well-known fact in 1901?

A. I did not say that. I said there was a great deal of difference of opinion among experts and must be on those estimates of deep level ores in the Mesabi Range.

Q. Do you know whether there was a great difference of opinion in 1901?

A. Undoubtedly there was; always has been.

Q. Of your own knowledge?

A. I may say I would have to say of my own knowledge. I do not know that specifically there were specific differences of opinion.

Q. All I want is your own knowledge.

A. How can anything of this kind be of your own knowledge; it is absurd.

Q. Do you know, Mr. Bacon, as to whether or not J. P.

Morgan and the other members of the Steel Corporation after the formation of the United States Steel Corporation had a great deal of discussion as to whether they should deal with labor unions as a unit by all the different companies in the United States Steel Corporation?

MR. LINDABURY: Objected to as irrelevant and even inconsequential.

THE WITNESS: I rather doubt if there was any such specific discussion as would be indicated by your question.

By MR. COLTON:

Q. Don't you recall any discussion on the subject of presenting a united front by the subsidiaries of the United States Steel Corporation, to present a united front to labor unionism?

A. No.

Q. For all companies to act together in connection with any strikes that might occur?

A. A discussion by whom?

Q. By the members of the finance committee?

A. I do not recollect such a discussion.

Q. Do you recollect any discussion by the finance committee or the members of it as to what their attitude should be with respect to labor unions?

A. You mean at this time?

Q. I mean after the formation of the United States Steel Corporation.

MR. LINDABURY: To what time?

THE WITNESS: I am really trying to find out whether you mean—I think you refer to the summer of 1901; I do not know whether you mean then or whether you mean any time.

By MR. COLTON:

Q. At any time.

A. A general policy?

Q. Yes.

A. Of attitude towards labor unions?

Q. Yes.

A. I remember the general attitude of the company towards labor.

Q. I do not want that; I want it towards labor unions.

A. As such?

Q. Yes, towards labor unions.

A. No, I have not any recollection of that except such as must have been incidental in talking it over. We went through a strike with the Amalgamated Workers there, whatever it was, and naturally at that time all such questions were discussed, so if I answered you "no, there was no such discussion," in answer to your catch question there, I should probably——

Q. Not "catch" at all.

A. It must be, because how can there be but one answer? It must have been discussed.

Q. Do you know as to whether or not there were discussions to the effect that it would be better, in dealing with labor unions, for each of the subsidiary companies to appear to be the actors in the matter, and to keep the name of the United States Steel Corporation out of it?

A. That is to say, dishonestly putting forward the name of the subsidiary company?

Q. Not dishonestly.

A. That is what you rather imply. No, I do not think so; I do not believe so. The United States Steel Corporation was a holding company, and the United States Steel Corporation, when it decided upon broad questions of policy which were discussed in the finance committee, recommended action to the subsidiary companies, if they believed any action was necessary, and I suppose that if any such thing as you indicate there existed it was perhaps because the United States Steel Corporation had nothing whatever to do with any particular strikes or dealings with any particular labor union. I imagine that to be the case.

Q. You do not have any recollection on the subject one way or the other?

A. I have a great deal of recollection on the general subject, but not specifically in answer to your question.

Q. This morning Mr. Lindabury asked a question to which you replied—I will read the question:

"Q. In the discussions with regard to the offer of the Carnegie property between you and Mr. Morgan, and between

you and Mr. Gary, and later with the Federal directors assembled at the office of J. P. Morgan & Company, was anything said on the subject of a monopoly or the suppression of competition or the restraint of trade?"

And skipping the objection, your answer:

"A. My recollection is that it was the unanimous opinion expressed—it was said by all those gentlemen present, I believe all of them; I know by Mr. Morgan, that under no consideration would he take part in anything which was or might be considered to be a monopoly or any attempt to restrain competition. I know that was one thing furthest from his willingness to participate in."

And then on that same subject, in answer to the following question:

"Q. Was the thought of acquiring a monopoly in the industry in Mr. Morgan's mind at all, so far as his mind was disclosed to you?

"A. Only so far as he was determined to prevent it by every effort of his own. Nothing was so far from Mr. Morgan's desire as a possibility of creating anything which approached a monopoly, or could in the slightest degree restrain trade."

Do you know whether J. P. Morgan, who took part in the formation of the United States Steel Corporation, also took part in the formation of the Northern Securities Company?

MR. LINDABURY: I object to that as irrelevant and incompetent.

THE WITNESS: Mr. Morgan?

By MR. COLTON:

Q. Yes.

A. That he took part in the formation?

Q. Yes, in the formation of the Northern Securities Company.

A. Yes.

Q. And they are the same people?

A. That is the same firm.

Q. Did you have anything to do with the formation of the Northern Securities Company? Were you not a defendant in that case?

A. I was, sir.

Q. And that company was dissolved?

A. Yes.

MR. LINDABURY: You did not let him answer, perhaps he was not able to, your other question.

THE WITNESS: I do not know whether there was another question. I was trying to think whether to say yes or not. I was a director, and, broadly speaking, I think I had to do with the formation. Of course, I had already answered that question because J. P. Morgan & Company—you asked me whether they were the same people; I was a member of the firm of J. P. Morgan & Company, so that the answer was already made.

By MR. COLTON:

Q. You did not attend the meetings of the executive committee, did you?

A. Of the Northern Securities Company?

Q. No, of the United States Steel Corporation?

A. I think I never attended one. I do not remember ever having attended one.

Q. Then you do not know directly as to the policies of the executive committee of the United States Steel Corporation?

A. Pretty directly, yes.

Q. You do not know from anything that was done at the meetings as to their policies?

A. Yes.

Q. Have you read the minutes of the executive committee?

A. No, but I have seen gentlemen who were presnt at the meetings, in whose veracity I have the utmost confidence.

Q. Did they report to you from time to time what transpired?

A. At the executive committee meetings?

Q. Yes.

A. Yes, the subject matter, everything that transpired at any executive committee meetings. I will not say everything, because they were discussed at the finance committee.

Q. So that the finance committee was made aware of things that were being discussed at the executive committee.

MR. LINDABURY: He didn't say discussed. He said done.

MR. COLTON: I say discussed.

THE WITNESS: Sometimes even discussed, yes, unfortunately.

By MR. COLTON:

Q. You spoke of the policy of the United States Steel Corporation. You were speaking then of its theoretical policy, were you not?

MR. LINDABURY: When he spoke of its policy this morning?

MR. COLTON: Yes.

THE WITNESS: I think that is an improper question.

By MR. COLTON:

Q. Were you speaking of its acts when you used the term policy?

A. I do not know what term you refer to. If you will be a little more precise about it I will answer.

Q. Do you recall having spoken of the policies?

A. Policies, I think I have spoken about them a great many times.

Q. Did you, in speaking of the policy, have any reference to what the company actually did, or its various subsidiaries?

A. Which policy?

Q. In speaking of the policy of the United States Steel Corporation in respect to its competitors?

A. In respect to its competitors?

Q. And in respect to its not restraining trade?

A. In respect to its competitors and in respect to not restraining trade—something more?

Q. I can give you the exact place, if you desire?

A. I want to know what your question is; that is all, in respect to competitors and in respect of not restraining trade?

Q. Yes.

A. Do you mean policies that were being performed at that time? What do you mean?

Q. I want to know whether you were speaking of policies that were being carried out or policies that were in the minds of some of the men in the United States Steel Corporation which were not carried out.

A. I think I get the drift of what you mean. I was speak-

ing of the policy of those who were practically in control of the United States Steel Company, and if they were not being carried out, it was because the obstacles at the time were insuperable, that everything was being done by the finance committee—I suppose you refer to what I spoke of in regard to the policy of the finance commit'ee—to insist upon those policies and insure those policies; it was a very difficult proposition, as perhaps you can imagine, to do everything at once.

Now, I want to ask a question, purely for information, as to whether that refers to specific policies, those relating to competitors.

Q. I am referring to just the kind of policy that you have been discussing in your statement before.

A. Exactly, but I believe that that question contained a reference to specific policies which included those in regard to restraint of trade, and as there is nothing about that, I think the question and answer should be correlated. Now, I want to know what the question was to which that was an answer. That is all; I want to be sure about it.

(The question and answer were repeated by the stenographer.)

THE WITNESS: (Continuing) Was there no reference to competitors and restraint of trade in the question?

By MR. COLTON:

Q. No, it was just the kind of policies you have been describing.

MR. LINDABURY: There was in the former question.

THE WITNESS: There was in an earlier one.

By MR. COLTON:

Q. If you go farther back, but these questions relate to the policy that you discussed and that you were discussing in your reply.

A. I was discussing in my reply the policy that related to the treatment of competitors generally, not to any restraint of trade. You added that; it was in order to be specific about that that I am making this point.

Q. Are you now speaking of the policy that you conceived

or considered the Corporation to have, from what was discussed in the finance committee or from what you know was carried out by the Corporation, and carried out by its various subsidiaries?

A. I should like again—I may be very stupid, but I would like to know to what policy you refer.

Q. Just the policy you are talking about.

A. What was it?

MR. COLTON: Read him the answer.

MR. LINDABURY: Oh, no; competitors, he means.

By MR. COLTON:

Q. Tell us what it was in regard to competitors.

A. That is, our treatment of competitors?

Q. Yes, and your general relations with competitors; do you include that?

A. To which I referred this morning?

Q. Yes.

A. When I said it was the policy of the company to treat them in a fair and decent way?

Q. Yes.

A. And not as it had been under the old conditions. I said something to that effect.

Q. Yes.

A. I have nothing to add.

Q. When you spoke then of the policy that you knew to be carried out, or of one that was merely discussed——

A. I have answered that question generally.

Q. Well, now, do you know of the rail pool which was organized prior to the formation of the United States Steel Corporation and which was continued after the United States Steel Corporation was formed?

A. I only know of it by what I have seen of the testimony here.

Q. And you, as a member of the finance committee, were not informed as to the rail pool at all?

A. Not so far as I can recall.

Q. Were you informed as to the plate pool which was formed shortly before the United States Steel Corporation

was formed, and continued in existence for a number of years after the United States Steel Corporation was formed?

A. When? Was I informed of it when?

Q. At any time during its existence?

A. My recollection is very indistinct about these things, very.

Q. Well, pools relate to policy with competitors, do they not?

A. Pools I should say do relate to the policy with competitors, although it might be contrary to the policy.

Q. And you do not know anything about the billet pool, in which several of the subsidiary companies of the United States Steel Corporation were members?

A. I remember you have asked a great many questions about it during the past few days.

Q. And you do not know anything about it, at any time that you were a member of the finance committee? Did you ever hear anything of a billet pool?

A. My recollection is that I had no accurate knowledge about it. Of course these things—well, you could always read about pools in the papers.

Q. How about a cotton tie pool?

A. If any such pools existed, they were absolutely contrary to the policy of the United States Steel Corporation, even though they may have existed after the formation of the Corporation.

Q. And did you know anything about a system of contracts with large competitors whereby they were at times given a discount in return for an agreement to purchase all of their supplies in a given line from the United States Steel Corporation?

A. I have heard those things referred to in the testimony here lately.

Q. At the time you were a member of the finance committee; all of these questions related to a time when you were officially connected with the Corporation.

A. But you keep asking me "Do you know"; "do you know"? That refers to the present.

Q. Did you hear of a system of a number of contracts with

large purchasers of steel products whereby a discount was given to the purchasers in return for an agreement to purchase all of their supplies in certain lines from one or more of the subsidiaries of the Steel Corporation?

A. I have no present recollection of having heard of such contracts or agreements.

Q. Did you know of a system of contracts with jobbers whereby the jobbers would be given a rebate if they bought 75 per cent. or more of their products from the United States Steel Corporation?

A. The same answer.

Q. Then, as a matter of fact, you do not know how the sales policies of the Corporation were enforced, do you?

A. I do not know now, you say?

Q. You did not know at the time you were a member of the finance committee?

A. Which do you mean?

Q. At the time you were a member of the finance committee, you did not know as to how the sales policies of the Corporation were being enforced?

A. In a general way I know that it was very difficult to bring about reforms, and if there were any such agreements or contracts or pools I had no specific or accurate knowledge of them, but I knew at that time in a general way that if there were any it was absolutely contrary to the policy of the company.

Q. Was it contrary to Mr. Schwab's policy?

A. Probably not.

Q. Was it contrary to Mr. Corey's policy?

A. Probably not.

Q. Was the rail pool contrary to Judge Gary's policy, in so far as he had been one of the persons concerned in the formation of the rail pool?

A. I do not know of the rail pool.

Q. Were pools contrary to Mr. Frick's policy?

A. I cannot speak for Mr. Frick. I can speak for Judge Gary, though, if you want to know.

Q. I only want to know with reference to Judge Gary and the rail pool?

A. I only know of his general policy.

MR. LINDABURY: There is no record of Judge Gary's attendance at any rail pool.

MR. COLTON: A number of witnesses have so testified.

MR. LINDABURY: After the Steel Corporation was formed?

MR. COLTON: A number have so testified.

MR. LINDABURY: I do not recall any.

THE WITNESS: If he did that would not prove that it was not contrary to his policy.

By MR. COLTON:

Q. Did you know anything about the wire pool at any time during its existence?

A. No. I never knew there was a wire pool, so far as I know.

Q. Except in the finance committee you did not come in contact with the officers of the subsidiary companies of the Corporation, did you?

A. Somewhat.

Q. There was read to you this morning the following from the finance committee minutes, Volume II, pages 603 and 604, a meeting of November 1st, 1904. "The president brought up the question of making some arrangement with foreign producers in regard to the price of rails to be sold in neutral markets. After full discussion the question was referred to Messrs. Gary and Corey with power."

You stated, did you not, that it was referred to them with a view of sidetracking it?

A. I think that was the substance of my testimony this morning.

Q. Didn't you also state that Mr. Corey was in favor of such an agreement?

A. Did I this morning? I think he suggested it. Yes; I recall that I think he did make such a suggestion.

Q. Now, the finance committee, in order to sidetrack this proposal, referred it to two men, one of whom favored it?

A. Yes.

Q. Could not they have voted down the proposition, in-

stead of referring it to two men, one of whom favored it?

A. Well, they did not.

Q. You do not know anything about the rail pool that was entered into in 1905?

A. Do you know anything about it?

Q. I have heard a great deal.

A. So have I.

Q. But you do not know anything?

A. No more than you do.

Q. I am not supposed to have been familiar with the steel industry and I am not being examined.

A. I am not either supposed to be familiar with the details or technicalities of the steel business.

Q. And you include among that steel pools and wire pools?

A. Not to any extent. I was familiar while I was there on the finance committee, I was familiar with pretty much all the questions of policy. If there were rail pools, as I said to you before, it was absolutely contrary to the policy of the company, that sort of thing, or things you have been mentioning, or details of those things.

Q. When did you leave the finance committee?

A. Well, I left it twice, I think.

Q. The first time?

A. I think November, 1901.

Q. When did you come back?

A. I think I came on the board in 1902. I rather doubt if I came back on the finance committee until 1903.

Q. During that period you did not have any active connection with the Corporation, did you?

A. No active connection with the Corporation.

Q. And when did you leave it the next time?

MR. LINDABURY: During which period, do you mean?

MR. COLTON: During the period he has just named?

MR. LINDABURY: Part of that period he was on the board of directors, and part he was on nothing.

By MR. COLTON:

Q. Did you have active connection when you were on the board of directors and not a member of the finance committee?

A. I suppose active connection means being a director; I might have been out of the country a considerable period of that time.

Q. During the period that you were not on the finance committee, did you come in close contact with what was going on?

A. Not so close as when I was on the finance committee.

Q. State the period during which you next left the Corporation so as not to have any official relation with the Corporation, what date?

A. After 1903, I think I remained a director until 1905, October, 1905.

MR. LINDABURY: To be exact, September 26th, 1905.

By MR. COLTON:

Q. I have got a memorandum here now, I think of what you testified to this morning, and I will call your attention to that. You became a director of the United States Steel Corporation and a member of the finance committee in April, 1901, quit both June, 1902; does that correspond with your recollection?

MR. LINDABURY: That is not what he said.

THE WITNESS: No, October or November, 1901.

By MR. COLTON:

Q. October or November, 1901?

A. That is my recollection.

Q. You resigned as Chairman of the finance committee on November 12th, 1901?

A. Yes.

Q. At the same time you ceased to be a director?

A. Yes.

Q. Between that period and June 3rd, 1902, did you have any active connection with the United States Steel Corporation?

A. No.

Q. Now, the year 1901, it is marked here, 1901, you resigned. When did you next become connected with the Corporation?

A. It is right there.

Q. Elected again on January 6, 1903, as a member of the finance committee?

A. Yes; that is my recollection.

Q. How long did you stay as a director or on the finance committee?

A. As a director I remained until October, 1905, I think. In the meantime I may have resigned from the finance committee.

Q. Resigned September 26, 1905?

A. There you are.

Q. How long, then, did you stay out of the corporation?

A. I know it was a long period. I stayed out then, if I recollect, until last year.

Q. And during that period you were not actively connected with the United States Steel Corporation?

A. Not officially.

Q. You did not attend any meetings of the finance committee?

A. No.

Q. Nor any of its committees?

A. Not officially; I was in pretty close touch with the affairs of the Steel Corporation, however.

Q. You were abroad a considerable portion of that time, were you not?

A. Yes; I kept up my touch, however, with Judge Gary.

Q. You mean by correspondence?

A. By correspondence and when I came home. I have answered that I had no official connection.

Q. Did you know anything about what was actually going on here in trade and competition during the period that you have testified that you were not actively connected with the Corporation?

A. Only as I had it from Judge Gary.

MR. COLTON: That would be hearsay. I except to any testimony covering that period, as hearsay.

MR. LINDABURY: I did not understand him on direct examination to give any testimony covering that period because I

confined all my questions to the period during which he was an officer.

THE WITNESS: That was my impression when he spoke to me about it this morning, and I intended to so confine my answers.

By MR. COLTON:

Q. Mr. Bacon, I wish you would look at Volume II of the Government Exhibits, pages 598 and 599, look at the finance committee minutes of March 19, 1903, page 598, Volume II.

A. Yes, I have it.

Q. Will you look over what is there reported, what the special committee reports on the Clairton contract, and I also call your attention that Judge Gary and Mr. Frick were the special committee on the Clairton property.

MR. LINDABURY: You read it through privately; that is what he means, and then he wants to ask you something about it.

THE WITNESS: If you will ask me a question, if I cannot answer it I will refer to the minutes.

By MR. COLTON:

Q. Do you recall the negotiations that were conducted with W. P. Snyder and Chairman Miller of the Crucible Company in respect to the Clairton property?

A. I remember there was such a transaction, but I had no personal contact with either Mr. Snyder or the other gentleman referred to.

Q. Do you know of the terms upon which it was proposed to acquire that property?

A. My knowledge was confined to the report of the special committee to the finance committee, and I am quite sure I was familiar with the terms at the time.

Q. Is this the report? Look it over and see whether that is substantially the report.

A. (After reading) I have no recollection of that at all. I only remember the fact that the Clairton property was bought. I think it was bought, wasn't it? Yes.

Q. Do you recall whether that provision that you find

on page 599 that the leading interests are not to engage in competitive business——

A. (Interposing) I have no recollection of that.

Q. And you have no recollection as to what is meant by "leading interests" there?

A. "Leading interests?" That is pretty difficult to say at this time.

Q. I understood you to say you were familiar with the report?

A. No, I did not; excuse me. I said at the time I was familiar with the transaction more or less.

MR. LINDABURY: As reported there.

By MR. COLTON:

Q. You were familiar with the acquisition of the Union Steel Company?

A. The same sort of familiarity; it was reported to the finance committee with the reasons for its purchase, and it was passed upon by the finance committee.

By MR. LINDABURY:

Q. That purchase was made before you were on the finance committee, or after your first resignation?

A. Yes.

Q. You were on the board, though?

A. Yes.

By MR. COLTON:

Q. Did you know anything about the extent of the Union Steel properties?

A. I only knew them as reported by the people who did know of them to the finance committee and to the board.

Q. Did you know what products they were making?

A. I presume I did at the time. I do not recollect now how the products were divided.

Q. Do you recall the competition between the United States Steel Corporation subsidiaries and the Union Steel company?

A. No, my recollection is that the competition was not a factor in the purchase at all.

Q. I except to your answer as not responsive to my ques-

tion. What I asked you was as to whether you recollect in respect to the competition between the Union Steel Company and the various subsidiaries of the United States Steel Corporation?

A. I do not remember that.

Q. Do you recall anything as to a provision in the contract with the Union Steel Company whereby the vendors of that company should remain out of business for a period of ten years?

A. No.

Q. Do you know that Judge Gary and G. W. Perkins were the negotiators of that contract?

A. I only know it because you say so or you imply it.

Q. Will you please look at page 574 and page 575 of that same volume, Volume II; that is a meeting—possibly that is the executive committee. If it is I won't ask you about it.

A. May 20th, 1902. I was absent from the country at that time.

Q. Then I will not ask you any questions in regard to it.

A. That is my best recollection, that I was absent.

(Thereupon an adjournment was taken until Monday, June 16, 1913, at 10:30 o'clock p. m.)

SEVENTY-SEVENTH DAY.

EMPIRE BUILDING,
71 Broadway, New York City,

Monday, June 16, 1913.

Before SPECIAL EXAMINER HENRY P. BROWN.

Present on behalf of the United States, MR. DICKINSON and MR. COLTON.

Present on behalf of the defendants, MR. LINDABURY, MR. SEVERANCE, MR. BOLLING and MR. REED.

W. J. FILBERT,

a witness called on behalf of the Defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. REED:

Q. Mr. Filbert, you live in New York, do you?

A. I do.

Q. What is your present occupation?

A. I am Comptroller of the United States Steel Corporation.

Q. How long have you been Comptroller of the Corporation?

A. Since June, 1902.

Q. Prior to that time what was your position?

A. I was Assistant Comptroller.

Q. How long were you Assistant Comptroller?

A. From April 1, 1901.

Q. Who was the Comptroller at that time?

A. Mr. Edward Shearson.

Q. Prior to the formation of the United States Steel Corporation what was your ocupation?

A. I was Auditor and Assistant Auditor of the Federal Steel Company.

Q. During what period?

A. From December, 1898, to April 1, 1901.

Q. Did the Auditor of the Federal Steel Company have the same authority and the same duties as the Comptroller of the United States Steel Corporation?

A. Yes, sir; generally speaking.

Q. Then you were with the Federal Steel Company during all of its existence prior to the formation of the United States Steel Corporation?

A. Yes, sir.

Q. Before that, with what company were you engaged?

A. I was with the Chicago & Northwestern Railway Company, in the accounting department.

Q. And you began your business life with that company?

A. I did.

Q. Mr. Filbert, there has been some suggestion in this case as to economies that were effected after the organization of the Steel Corporation by a comparison of the costs of the different furnaces and different steel works. I wish you would state how soon efforts were made along that line after the formation of the United States Steel Corporation. How soon was that subject taken up?

A. Immediately after April 1, 1901; within the first two or three weeks after the 1st of April, Mr. Shearson, the comptroller, called a meeting in New York of the accounting officers of all the subsidiary companies for the purpose of discussing general accounting methods and practices then observed by the several companies, the form of returns and statements and exhibits of all kinds which they made, and also for the purpose of taking up and formulating a standard and uniform classification of accounts and of cost statistics.

Q. Were you present at that meeting?

A. I was; and I may add that at the meeting Mr. Schwab and Judge Gary attended for part of the time, and both of them made statements to the meeting; and Mr. Schwab particularly dwelt upon the great desirability of obtaining these standard and uniform cost statistics and classification of accounts as promptly as possible, for the purpose of obtaining increased economy and greater efficiency.

Q. What action was taken at this time toward securing uniformity in cost accounting?

A. At that meeting Mr. Shearson, the comptroller, appointed a special committee to design and formulate these standard and uniform cost accounts. Mr. J. J. Campbell, the auditor of the Carnegie Steel Company, was chairman of that committee, and a number of the auditors of the other companies were on the committee. That committee met very frequently during the ensuing two months. At times they were in session here in New York continuously each day for a week or more.

Q. Did you attend those meetings?

A. I attended those meetings partially, not entirely. Mr. Shearson attended the meetings continuously; but at times I was there. The meetings, however, were attended by Mr. W. R. Walker, assistant to the president, who had been placed in charge of the efficiency and economy department of the Corporation, if I may use that term, and which was charged with the duty of following up——

Q. What is Mr. Walker's present position?

A. He is still assistant to the president of the Corporation.

Q. In the same department?

A. In the same department.

Q. And he has been in that department, that you informally called the "efficiency and economy department," continuously from the formation of the Steel Corporation down to date?

A. He has.

Q. How soon, Mr. Filbert, were any results attained through the work of that committee?

A. On the 1st of July, 1901, there was introduced and put into effect a standard and uniform classification of cost accounts and cost and operating statistics for blast furnace departments and for open-hearth steel works departments.

Q. Prior to that had the costs of the different companies been kept in anything like the same manner? Was it possible to contrast them according to the method that they had previously pursued?

A. Not to compare them and contrast them with entire satisfaction, except to a certain degree in blast furnaces.

Q. How about steel works?

A. And open-hearth steel works.

Q. Those were the two in which it was found easiest to get on a uniform basis at once?

A. It was; that is correct.

Q. That was in the summer of 1902, was it?

A. 1901.

Q. During the following year were those efforts continued?

A. They were, and a uniform classification of cost accounts and statistics was introduced from month to month, after July, 1901.

Q. Do you remember how many different comparative cost statements had been secured within say a year from that time up to the summer of 1902?

A. By August, 1902, we were making twenty-nine different cost statements, comparative statements; that is to say, statements covering twenty-nine different products or operations.

Q. From that time until the present has that effort been continued?

A. It has.

Q. At the present time how many statements are you making of that kind?

A. I think we are making about fifty at the present time.

Q. How many in October, 1911?

A. We were making forty-four.

Q. I wish you would describe the nature of those comparative cost statements.

Mr. Dickinson: I would like to enter a general objection which will be a continuing one, to all questions relating to costs and economies, as irrelevant and incompetent. Will you consent to that?

Mr. Reed: Certainly, Judge.

Mr. Dickinson: And it will be regarded as applying to what has gone before and what comes after?

Mr. Reed: All Mr. Filbert's evidence on the subject of costs?

MR. DICKINSON: Yes.

THE WITNESS: Those statements are large sheets which show on them the different departments or plants within the Steel Corporation's organization which produce the same kind of products. They also show the operating or production results for the months, showing the product produced, the quantities of the different kinds of raw material used, the expenditures made, all reduced to per ton of product, for the various classes or kinds of expense which enter into the production cost of the products, such as labor of various kinds, fuel used, power used, maintenance charges, repair charges, switching charges, departmental expense, etc. They also show a wide range of statistics as to practice, for example in the case of blast furnaces they show a theoretical yield from ore and the actual yield and the loss. They show the cubic feet of air blown per minute to per ton of product, and the quantity of coke used per ton of product.

Q. They seem to go into great detail?

A. They do. They also show the temperatures at the top of the furnace and at the bottom of the furnace, and the average temperatures of the heats, and a wide range of miscellaneous statistics of that character.

Q. Take your blast furnace sheets alone. Could you give us any idea of the number of entries or items on one of those statements?

A. On our detailed furnace cost sheet there are over 8,000 items of cost and practice figures per month.

Q. And that is for blast furnaces alone?

A. For blast furnaces alone. That is only one exhibit for blast furnaces. We make two exhibits for blast furnaces; that is the larger one.

Q. Are those statements made monthly?

A. They are.

Q. Is there any rank or order observed in making up those statements among the different furnaces?

A. There is.

Q. What is it?

A. Furnaces are ranked according to their practice; those

having the best practice or best cost are shown as No. 1, No. 2, and so on, *seriatim*.

Q. What is done with those statements?

A. Those statements are sent by us, in addition to the Corporation officials here, to various officials of the subsidiary companies which are concerned and interested in these manufacturing statistics. They go out not only to the executive officers of those companies, but to the plant managers of them.

Q. How long has that been the custom, to distribute them widely?

A. Since the beginning.

Q. Can you give us any idea of the number of such statements that are published by you each month?

A. At the present time?

Q. At the present time.

A. Per month, did you say?

Q. Per month or per year, however you do it.

A. We send out at the present time about 1,600 statements per month, or 20,000 a year.

Q. They are printed, I presume?

A. Some are printed on a printing press and some are printed on a typewriting printing press; I have forgotten the technical name of it; they are typewritten and then printed on one of these presses.

Q. I assume that Mr. Walker would be best able to give us the results that have been obtained by that practice?

A. He would, because he studies that with his staff continuously.

Q. Can you of your own knowledge say whether there is any competition among the different plant managers to get at the top of that list?

A. I know there is great competition.

Q. You could get us, I suppose, one of the blanks or forms on which these statements are made up?

A. Certainly; any time.

Q. To show the detail in which it is done?

A. Yes.

Q. That can be got at at lunch time?

A. In a minute, yes.

Q. Mr. Filbert, I call your attention to Defendants' Exhibit 42; with your permission, Judge, I will use a copy. Have you a copy there, Mr. Filbert?

A. Yes, I have.

Q. Can you state, Mr. Filbert, in whose office that statement was prepared?

A. It was prepared in my department.

Q. What sources of information has your department on matters of production and cost and selling prices of products of the different constituent companies?

A. Each subsidiary company monthly makes a return to us in detail of the production of each kind of product at each producing department. They also make a return showing in detail the products of each kind or class shipped from each mill of that company during the month. There is one exception to that, namely, the case of the American Steel & Wire Company. Their report to us monthly of shipments is a combined report of the shipments from all their mills, and not from each mill.

Q. How long has it been the custom for these companies to make these monthly reports?

A. Well, they have made monthly reports on those general lines since the beginning, since April 1, 1901; but from July 1, 1901, those reports have been in what I would term a more refined condition and under a more systematic method, that being as early as we could get up a uniform style and method for reporting these things for the various companies.

Q. And it has been continued constantly since July 1, 1901?

A. It has.

Q. Do you get reports of costs from each of the mills monthly?

A. We do.

Q. Do you get reports of sales from each of these subsidiaries monthly?

A. By mills?

Q. Of sales by mills or in any other way.

A. By sales do you mean shipments?

Q. Reports of either shipments or sales.

A. We get reports of sales, meaning by the term sales orders entered, daily.

Q. You receive those daily?

A. We receive those daily.

Q. And have for years past?

A. Yes, sir.

Q. Do you get reports of shipments?

A. We get reports of shipments monthly and weekly, the monthly returns being in much more detail and comprehending money figures, while the weekly reports of the shipments comprehend tonnage only.

Q. Do these sales reports go into detail as to the contracts made and orders entered?

A. Only the character of the product and the tonnage.

Q. And the price?

A. No, sir.

Q. Do your monthly shipment reports go into detail?

A. They do.

Q. As to prices received?

A. They give the prices received f. o. b., mill, the mill cost and the net proceeds.

Q. By products?

A. By products.

Q. Of your mills?

A. Of our mills except in the case of shipments of the American Steel & Wire Company, which makes a consolidation for all their mills and reports it in one figure for all those mills.

Q. Your production figures, you have said, go into detail in much the same way?

A. They do.

Q. In the work of the Corporation and the business of the Corporation are these statements relied on?

A. They are, because they are the original returns and compilations by the subsidiary companies of their business. They form an integral part of the general profit and loss account, and of the general balance sheet of the subsidiary companies, which latter, namely, the general profit and loss ac-

count and the general balance sheet, are audited by us from the books of the subsidiary companies.

Q. Then what opportunity for checking up the accuracy of these monthly and weekly reports have you, and how is their accuracy checked?

A. As to tonnage, the accuracy of these reports is established by verifying them against the production costs, which gives the output of the product and the inventories of the material on hand.

As to the money figures the results shown on this monthly statement of selling prices and mill cost prices, as I stated before, form an integral part of the profit and loss account of the company and the general profit and loss account of the company is a section of the general balance sheet of the company, and the general balance sheet of the company is a transcript from the general books of the company. This balance sheet and these general profit and loss accounts are audited by us.

These balance sheets and these profit and loss accounts are audited by us and under our direction from the actual books of record of the subsidiary companies. That constitutes our audit and check.

Q. In that way you are reasonably confident that the returns are correct?

A. I know they are correct.

Q. Now, Mr. Filbert, calling your attention to Exhibit 42, which you say was prepared in your office, was that prepared from such information as you have just described?

A. It was prepared from that information as transcribed and recorded on records in our office, as it naturally would have to be in showing average figures for a year when we get monthly reports.

Q. Have you yourself personally checked up the figures which appear on Exhibit 42, four sheets?

A. I have checked the figures on the exhibit you refer to against the records in my department.

Q. And is the statement substantially accurate?

A. It is substantially accurate, yes.

Q. Have you found any corrections which ought to be made?

A. I have found some corrections, some typographical errors and some errors made by the clerks in taking off the figures and putting them down onto this statement.

Q. Have you a copy of Exhibit 42 on which you have made notes of these corrections?

A. I have.

MR. DICKINSON: Before you go on, Mr. Reed, it is understood between us that instead of interrupting you with single exceptions, I can reserve any exceptions and make them on development of cross examination if I so desire?

MR. REED: I think so, Judge, yes.

By MR. REED:

Q. Mr. Filbert, I wish you would state just what errors you have found here in the figures shown for the year 1904.

MR. DICKINSON: Suppose you let him state them right along.

MR. REED: Year by year, Judge.

MR. DICKINSON: And then one question will cover it.

THE WITNESS: In the year 1904 the export price received for splice bars and rail joints was originally stated at $24.17; it should be $24.11.

Bessemer rods, domestic price, was stated at $27.14; it should be $29.14.

Castings, iron and steel, domestic, was stated at $38.12; it should be $37.25.

In that same year no price was given for cement. The average price should be $1.20.

By MR. REED:

Q. Now, in 1905?

A. In 1905, on the last page, castings, domestic, were stated at $48.22; it should be $43.35.

Rolls, domestic, were stated at $60.01; it should be $58.95.

The price of cement was omitted entirely, and it should be $1.08.

In addition, no price was inserted for export shipments of paper insulated cable. The figures should be $254.61.

Also in that same year the price for export shipments of wire, round, special, was stated at $564.50. That is wrong. I do not know what the price was in that year because the statistics do not show up export shipments of round wire, special, separately, and the clerks picked up some other wire and put it in there, which they ought not to have done.

Q. Now, in 1906?

A. The price for shipments of scrap and ingots, domestic, in 1906, was given as $24.58; it should be $24.98.

The price for cement was omitted. It should be $1.38. Likewise, the price for export shipments of all other field fence was omitted. It should be $54.60.

Q. Now, in 1907?

A. In 1907 the domestic price for axles, turned, wheel seated and journaled, domestic, was stated at $49.01; it should be $41.09.

The price for Bessemer rods, export, was stated at $29.79; it should be $29.65.

The price for wire rope, iron, steel and copper, export, was stated at $157.20; it should be $159.79.

The price for toe calks, export, was stated at $93.24; it should be $93.12.

The price for field fence, all other, domestic, was omitted. It should be $48.50. Likewise the price for field fence, all other, export, was omitted; it should be $64.21.

Q. Now, in 1908?

A. In 1908 the price for wire, extra galvanized, domestic, was stated at $69.55; it should be $69.85.

The price for wire rope, iron, steel and copper, export, was stated at $143.20; it should be $144.24.

The price for castings, iron and steel, was stated at $32.08; it should be $32.50.

The price for flat wire springs, export, was stated at $202.47; it should be $202.07.

There was included in the statement a price for field fence, all other, export, of $64.21. That should not be in there at all. It should have been in the preceding year, as I have previously

stated, as there were no shipments of that commodity in 1908 for export.

Q. In 1909?

A. The price of wire rope, iron, steel and copper, export, was stated at $150.39. It should be $151.82.

The prices of structural shapes from North Works in 1909 are the prices per gross ton, while for the preceding years they are the prices per net ton. Therefore the letters g. t. should be inserted before those 1909 prices.

Q. In 1910?

A. In 1910 the export price for wire rope, iron, steel and copper was stated at $146.48. It should be $149.41.

Q. In 1911?

A. In 1911 the domestic price for galvanized cable or strand was stated at $96.72. It should be $86.72.

The price for toe calks, domestic, was stated at $88.02; it should be $83.12.

In 1911 no price was stated for heavy ferro-titanium rails. There were a few shipped, and the price should be $29.85.

Q. In 1912, in verifying these figures did you find that any shipment had been omitted from consideration?

A. I did. I found that the figures, particularly for the wire products, had omitted to take cognizance of a small tonnage of 461 tons of miscellaneous wire products that was shipped for export through the Pacific Coast Department.

Q. What were the exports for that year in round figures?

A. Upwards of 2,000,000 tons.

Q. And your accountant had neglected to include those 461 tons?

A. We record the export statistics in two sections or records, one covering the shipments which are invoiced out through the 30 Church Street Office of the United States Steel Products Company, and the other, which are invoiced out through the Pacific Coast Department of the United States Steel Products Company. This latter department, in 1912, shipped only 461 tons for export, and that schedule was overlooked in making the statement for 1912, and by including those 461 tons it changes about 25 of these figures one or two cents per ton.

Q. And you have made those corrections?

A. I have made those corrections.

Q. You found that omission yourself in checking this up?

A. Yes, I did.

Q. After the corrections which have been mentioned have been made in Exhibit 42 is it correct?

A. It is.

Q. Of your own knowledge you say so?

A. Of my own knowledge.

Q. Have you prepared a corrected copy of this exhibit?

A. I have.

Q. Will you produce it?

A. Yes.

MR. REED: I ask to have it marked.

(Here the statement was marked, for identification purposes, Defendants' Exhibit No. 67.)

MR. SEVERANCE: Do you mind if we do not have the original one printed?

MR. DICKINSON: Yes, I want it printed.

MR. SEVERANCE: Very well; print them both.

By MR. REED:

Q. I show you Defendants' Exhibit 67 and ask you whether that is the corrected copy you spoke of?

A. It is.

MR. REED: Defendants offer Exhibit 67 in evidence, and ask the Government if it will accept Defendants' Exhibit 67 in lieu of the Defendants' Exhibit No. 42?

MR. DICKINSON: I prefer to have them both printed.

(The statement referred to was offered in evidence and marked "Defendants' Exhibit (Filbert) No. 67," and will be found in the volume of exhibits.)

Q. Were there any other changes, just to make the record complete for the year 1912, other than those made necessary by the inclusion of the small 400 tons shipment?

A. Yes, there were three in export shipments, axles, turned all over axles, forged only, and axles, locomotive driving, arising from the fact that those axles got mixed up in the

record and some locomotive driving axles were included with the forged only, and vice versa.

Q. How much did that change the three figures that you spoke of?

A. It changed the export figure for axles, turned all over, from $36.75 to $36.50, and the axles, forged only, from $40.69 to $35.52, and the locomotive driving axles from $52.57 to $49.73.

Q. Mr. Filbert, I call your attention to Defendants' Exhibit No. 43; who prepared that statement?

A. I did.

Q. What is the caption of that?

A. "Comparative statement of shipments and gross sales (f. o. b. mills) in export and domestic business for the years 1904 and 1912."

Q. Did you prepare that statement yourself?

A. I did.

Q. From the information reported to you by the subsidiary companies?

A. Yes, sir.

Q. Is the statement correct?

A. It is.

Q. This information is that which came in to you periodically, month by month, is it?

A. During those two years, and so recorded by us in our office.

Q. And relied upon by the Corporation?

A. Yes.

MR. DICKINSON: I prefer you to ask him to explain how he did it rather than suggest. I object to that as leading.

MR. REED: All right, Judge.

By MR. REED:

Q. Is there any difference in the character of the data which you used in the preparation of this sheet and the preparation of Exhibit 42?

A. Absolutely none; they were both taken from the same records and the same compilations.

Q. Is this correct?

A. It is.

Q. I call your attention, Mr. Filbert, to Defendants' Exhibit No. 44, which is headed "Tonnage of exports of iron and steel by the U. S. Steel Corporation interests for the years shown below," those years being 1902 to 1912. Who prepared that statement?

A. I did.

Q. From what information?

A. From the same data and returns received from the subsidiary companies that I have heretofore explained, concerning the table of average selling prices received, and the table just referred to of comparative sales and export prices, original returns from the subsidiary companies.

Q. You prepared that statement personally?

A. I prepared it personally.

Q. Of course I do not mean the typewriting of it.

A. I do not mean that either.

By Mr. Dickinson:

Q. The headwork, you mean?

A. It is not very much headwork.

By Mr. Reed:

Q. You wrote out the figures yourself?

A. I prepared the rough in my own handwriting and checked it and verified it, and subsequently, after it was typewritten, verified the typewritten statement against the rough.

Q. And is Exhibit 44 correct?

A. It is.

Mr. Reed: I ask to have this paper headed "statement showing for the years named below the tonnages of all kinds of products other than iron ore, coke, coal and cement" marked in evidence.

(The statement referred to was offered in evidence and marked "Defendants' Exhibit (Filbert) No. 68," and will be found in the volume of Exhibits.)

By Mr. Reed:

Q. I call your attention now, Mr. Filbert, to Defendants' Exhibit 68, headed in brief "Statement showing for the years named below the tonnage of all kinds of products other than

iron ore, coke, coal and cement shipped by the Corporation to customers in the domestic and export trade, respectively," and ask you who prepared that statement?

A. I did.

Q. Did you prepare it personally?

A. I did.

Q. And from data of the kind that you have described to us?

A. Yes.

Q. Is this statement correct?

A. It is.

MR. DICKINSON: It is understood, of course, that——

MR. REED: It is understood that you will object to it later on cross examination if you see fit to make an objection.

By MR. REED:

Q. I call your attention, now, Mr. Filbert, to Defendants' Exhibit No. 45, entitled "United States Steel Corporation employes and pay roll." Who prepared that statement?

A. I do not know who prepared it.

Q. Have you checked it over?

A. I have.

Q. From the information on file in your office?

A. Yes, sir.

Q. Reported to you in the manner in which you have described?

A. Yes, only, of course, this information came on a different series of reports from those that I have previously referred to in respect to production and shipments.

Q. Do the subsidiary companies report periodically to you the amount of their pay rolls and the number of their employes?

A. They report monthly.

Q. Both of those facts?

A. Yes, sir.

Q. And have you checked this statement?

A. I have.

Q. From information thus reported to your office?

Q. Is this co

t is.

Yes, sir.

Q. Have you done that personally?

A. I did that personally.

Q. Is Exhibit 45 correct?

A. It is, sir.

Q. Of course the note at the bottom about the average wage for 1913, I assume is more or less an estimate?

A. That is somebody's estimate, not mine.

Q. You are unable to check that from your records?

A. Of course not; it is dealing with the future.

Q. Have you, Mr. Filbert, prepared any statement or memoranda regarding the number of employes in 1902 compared to the number in 1912, and the amount of wages then and now?

A. I prepared a statement showing the number of employes and the total payroll during the year ending March 31st, 1902, which was the first twelve months year following the organization of the Steel Corporation, in comparison with similar figures for the calendar year 1912.

Q. Without putting the memorandum in evidence, in short tell us what the number of employes was for the year ending March 31st, 1902?

A. The average number of employees during that period was 158,263.

Q. And what was the number during the year 1912?

A. 221,025, an increase of 39.6 per cent.

Q. And what was the payroll during the year ending March 31st, 1902?

A. $112,829,198; and during 1912 $189,351,602, an increase of 67.8 per cent.

Q. What was the average annual wage paid in the first year, the average earnings per employee?

A. In the first period it was $712.92; in the year 1912 it was $856.70, an increase of 20.2 per cent.

Q. I call your attention, Mr. Filbert, to Defendants' Exhibit No. 46, a statement headed "American Steel & Wire Company. Total shipments." Who prepared that statement?

A. I did.

Q. You prepared it personally?

A. I prepared it personally.

Q. From information of the kind reported to you by the American Steel & Wire Company?

A. Yes. I think I ought to explain that for the year 1900 the information was reported in somewhat different mechanical form than it was after the formation of the Steel Corporation. The figures for the year 1900 were on a regular report of the American Steel & Wire Company prepared by them on identically the same lines, substantially the same lines, that they subsequently reported to us, made returns to us, beginning April 1, 1901.

Q. When were the statistics for the year 1900 reported?

A. Very shortly after April 1, 1901; I know that.

Q. They were not reported since this suit started?

A. No; it was a regular report that we received from them at that time.

Q. Now, as the method of accounting seems to have changed somewhat, are these two years comparable as they are shown on this statement?

A. They are except with respect to the classification of two or three of the products, namely Worcester specialties. Worcester specialties in 1900 compared with Worcester specialties in 1911 is not a true comparison because of the different character of miscellaneous products which make up that grouped item in the respective years.

Q. That is the matter to which attention is called in the footnote A?

A. Yes.

Q. Are the totals correctly and fairly comparable?

A. They are, absolutely.

Q. Is the statement correct?

A. It is.

Q. Who put those notes on the foot of the statement?

A. I did.

Q. They are correct, are they?

A. They are.

(Here five separate statements were marked temporarily for identification purposes, Defendants' Exhibits Nos. 69 to 73, inclusive.)

By Mr. Reed:

Q. I call your attention to Defendants' Exhibit 69, which is entitled "Comparative statement of percentage of total production in United States of finished rolled iron and steel products by respectively the United States Steel Corporation and all other manufacturers, for the years 1901 and 1911." Who prepared that statement?

A. I prepared that statement.

Q. What was the source of your information?

A. The information is taken from the published statistics of the American Iron and Steel Association, although with respect to the figures, or at least the tonnages upon which the percentages for the Corporation are stated, I know that they are correct from our own records.

Q. Do they correspond or not with those of Mr. Swank?

A. They correspond with those of Mr. Swank.

Q. And when I speak of Mr. Swank I mean the American Iron and Steel Association.

A. Yes, sir.

Q. Is this statement, Exhibit 69, correct?

A. It is. I would add that the percentages on the left hand side of the statement are original percentages which were calculated by me. Those are not taken from the statistics of the Association.

Q. On what are they calculated?

A. Calculated from his figures.

Q. And those percentages are correct, are they, based on his figures?

A. Yes.

Q. What led you to select this particular division of products?

A. That is the division of products which the American Iron and Steel Association's statistics adopt; I followed that.

Q. That is the division adopted by the American Iron and Steel Association?

A. That is the division in which they present the production.

Mr. Reed: We offer in evidence Defendants' Exhibit No. 69.

(The statement was thereupon marked "Defendants' Exhibit (Filbert) No. 69, June 16, 1913," and will be found in the volume of exhibits.)

By Mr. Reed:

Q. I direct your attention to Defendants' Exhibit 70, a statement headed "Comparative statement of total tonnage of finished rolled iron and steel products produced in the United States by respectively the United States Steel Corporation and all other manufacturers for the years 1901 and 1911." Who prepared that statement?

A. I did.

Q. Did you prepare it personally?

A. I did.

Q. What was the source of your information?

A. The statistics of the American Iron & Steel Association.

Q. Is that statement correct?

A. It is. This statement shows in tons what the preceding statement showed in percentages.

Q. Exactly; and made up, I presume, from the same information?

A. Exactly.

Mr. Reed: I offer Exhibit No. 70 in evidence.

(The statement referred to was offered in evidence and marked "Defendants' Exhibit (Filbert) No. 70," and will be found in the volume of exhibits.)

By Mr. Reed:

Q. Defendants' Exhibit No. 71, now, Mr. Filbert. It is a statement headed "Comparative statement of production of plates and sheets by United States Steel Corporation and other manufacturers for the years 1901 and 1911."

Who prepared that statement?

A. This particular statement I prepared myself.

Q. That is what I asked you. You prepared that personally—all except the typewriting?

A. All except the typewriting, yes.

Q. What was the source of your information there?

A. The information was drawn from the records of the American Iron & Steel Association at Philadelphia.

Q. In this division of plates and sheets you seem to have made three classes or groups of plates and sheets. That is, plates, sheets and black plate.

A. Yes, sir.

Q. Are those products competitive, in the sense that any of them are used for the same purpose?

A. A small part of the tonnage included in the first item, that is, plates produced on what are generally termed plate mills, is competitive with a small part of the tonnage included in the second item, designated as sheets, produced on what are generally termed sheet mills; but not all of the tonnage, by any means, is competitive, because it is used for a different purpose. There is, however, a lapping over there at the dividing point where sheet mills produce plates of gauges which are also produced on plate mills, and *vice versa*.

Q. That is, the lightest plates are competitive with the heaviest sheets?

A. Exactly.

Q. Are either plates or sheets competitive with what you have classified as black plate?

A. No.

Q. At the bottom of Exhibit No. 71 I notice this statement: "Relative position in the trade of Steel Corporation and other manufacturers in the production of welded and seamless pipe and tubes in the years 1901 and 1911." Did you prepare that statement?

A. I did.

Q. Personally?

A. Yes, sir.

MR. REED: I offer Exhibit No. 71 in evidence.

(The statement referred to was offered in evidence and marked "Defendants' Exhibit (Filbert) No. 71," and will be found in the volume of exhibits.)

By MR. REED:

Q. Now, Defendants' Exhibit No. 72, Mr. Filbert: "Comparative statement of percentage of total production in the

United States of raw and semi-finished materials and products by, respectively, the United States Steel Corporation and all other manufacturers for the years 1901 and 1911." Who prepared that statement?

A. I did.

Q. Did you do it personally?

A. I did.

Q. From what information?

A. From the statistics published and issued by the American Iron and Steel Association.

Q. Is this statement correct?

A. It is.

Q. I notice at the foot of that sheet a further statement headed "Comparative statement of total tonnage of raw and semi-finished materials and products produced in the United States by, respectively, the United States Steel Corporation and all other manufacturers for the years 1901 and 1911." Did you prepare that also?

A. I did.

Q. Is it correct?

A. It is.

Q. Prepared from the figures of the American Iron and Steel Association?

A. Yes, sir.

Q. What is the connection between the two statements which are part of Exhibit No. 72?

A. The statement at the top of the page shows the comparative production of the Steel Corporation and all other manufacturers of these various products in percentages; that is to say, the percentage which each had to the country's total in the respective years 1901 and 1911. The statement at the bottom of the page shows that same comparative information in gross ton figures; and also the percentage of increase in the tonnage.

Q. That is computed by you, yourself, is it—the percentage?

A. I computed that percentage myself.

Q. Did you check up the Association's figures with any of your own figures?

A. We always do. The Association's figures are correct, according to the Steel Corporation's own results.

Q. As far as they show your production, it checks with your own figures?

A. It is correct. It does, yes.

MR. REED: We offer Exhibit No. 72 in evidence.

(The statement was thereupon marked "Defendants' Exhibit (Filbert) No. 72, June 16, 1913," and will be found in the volume of exhibits.)

By MR. REED:

Q. I call your attention, Mr. Filbert, to Defendants' Exhibit No. 73, headed "Comparative statement of production by United States Steel Corporation and 'independent companies' for the calendar years 1901 and 1911." On the second sheet of the same exhibit there is a statement entitled "Percentage of production by United States Steel Corporation to the entire production by all manufacturers in the United States. For the calendar years 1901 to 1911, inclusive." Who prepared those two statements?

A. I did.

Q. Did you do it personally?

A. I did.

Q. Who calculated the percentages that appear on those sheets?

A. I did it in conjunction with one of my assistants.

Q. And did you check his work?

A. It was not necessary, because we knew it was right. I did check the figures that he put down on the calculating machine; and he did the calculating, and of course the results were correct, because the machine does not make mistakes.

Q. You use a machine for making these figures?

A. We do.

Q. Were all these percentages calculated mechanically in that way?

A. They were.

Q. And do you know them to be correct?

A. I know that they are correct.

Q. You know it is a good machine, do you?

A. Yes, I do.

MR. REED: If we were to put that machine in evidence it would be one of the most interesting things in this case.

MR. DICKINSON: We would like to see it, anyhow.

By MR. REED:

Q. It is a thoroughly reliable machine?

A. Oh, absolutely; moreover, I might add that we subsequently verified these percentages against the same percentages which were published at various times and in various places by the American Iron & Steel Association.

Q. And did they check correctly?

A. They did.

Q. Now, Mr. Filbert, what is the source of the information which you have put on the first sheet, Exhibit 73; that is, the "Comparative statement of production by tons and by percentages for the years 1901 and 1911?"

A. All of the basic figures used in the preparation of this statement are obtained from the published statistics of the American Iron & Steel Association. Of course in respect of those figures showing the production and output of the Corporation, we know that they are correct, by verification of the same against our own figures.

Q. The division of products here was obtained from what source?

A. From the same source—the American Iron and Steel Association's statistics and publications.

Q. Is this the same division of production that they have adopted?

A. It is.

Q. For several years?

A. It is.

Q. In the statements of percentages shown on the second sheet of Exhibit No. 73, Mr. Filbert, what was your source of information in the preparation of those percentages? The same?

A. The same as I have stated for the first sheet in this statement.

MR. REED: We offer Exhibit No. 73 in evidence.

(The statement was thereupon marked "Defendants' Ex-

hibit (Filbert) No. 73, June 16, 1913," and will be found in the volume of exhibits.)

Q. Mr. Filbert, have you prepared a statement, or have you any memorandum which will give exactly the figures of total wages paid up to December 31st, 1912, by the Steel Corporation, and its taxes, interest and dividends?

A. By the Steel Corporation and its subsidiary companies, I have prepared such a memorandum.

Q. Will you state on the record the amount paid to employes in wages by the Steel Corporation and its subsidiary companies up to December 31st, 1912?

MR. DICKINSON: Objected to as irrelevant.

THE WITNESS: From April 1st, 1901?

By MR. REED:

Q. Yes.

A. The amount paid to employes in wages and salaries totaled $1,659,944,622.

Q. What amount has been paid in taxes by the Corporation and its subsidiaries in that same period?

MR. DICKINSON: Objected to as irrelevant.

THE WITNESS: The amount paid for taxes to states, counties, municipalities and the United States Government, totaled $66,579,789.

By MR. REED:

Q. How much has been paid in interest on bonds in the same period by the same companies?

MR. DICKINSON: Objected to as irrelevant.

THE WITNESS: Interest on bonds and mortgages?

By MR. REED:

Q. Yes.

A. And purchase obligations, has been $337,109,448.

Q. How much has been paid in dividends on outstanding stocks, I mean stocks in the hands of the public?

MR. DICKINSON: Objected to as irrelevant.

THE WITNESS: $495,196,490.

By Mr. Reed:

Q. Of course that takes no account, I presume, of dividends paid between the Corporation and its companies?

A. Certainly not; this is dividends on outstanding Steel Corporation stock.

Q. You have checked up these figures personally, have you, that you have just given?

A. I prepared them personally.

Q. There has been some evidence in round figures as to the cost to the Corporation of its sanitation and welfare work. Have you yourself computed the exact cost to the Corporation of that work during the years 1911 and 1912, and, if so, please state what the figures were.

Mr. Dickinson: Objected to as irrelevant.

The Witness: I have checked up the returns and reports received from the subsidiary companies of the amounts expended by them for these purposes, and find that during the year 1911 for sanitation and welfare work there were expended $1,276,751.66, and during the year 1912 $1,068,243.

By Mr. Reed:

Q. State what purposes these expenditures covered, Mr. Filbert, in a general way?

A. They covered emergency hospitals, drinking water systems, cooling systems about the plants, sanitary arrangements, improvement of the houses which are owned by the companies and leased to employes, and the grounds surrounding them, contributions for various clubs and associations for improving the welfare and amusement of the people.

Q. And work of that kind that has been described more in detail by other witnesses?

A. Yes, sir.

Q. What was the cost to the Corporation and its subsidiaries the same years for accident prevention, the installation of safety devices; have you the approximate figures or the exact figures?

Mr. Dickinson: Objected to as irrelevant.

The Witness: For the payments under the voluntary accident relief plan?

By Mr. Reed:

Q. (Interposing) That was not what I asked for.

A. Wasn't it? What did you ask for?

Q. I asked you for accident prevention and safety devices.

A. During 1911 there were expended for safety devices and accident prevention $747,469.26, and during 1912 $614,-367.29.

Q. Under this pension system that we have heard about, what has been the cost to the Corporation of that system?

Mr. Dickinson: Objected to as irrelevant.

The Witness: Up to the close of 1912 the Corporation had appropriated $2,000,000 for a permanent fund, the income from which is available for distribution for pension purposes, and in addition it also appropriated the sum of $163,018 for that same fund, covering working cash required by it and not for investment, and in addition to that it has paid $238,780 to meet deficiencies in the payments of pensions as between the income from the fund established as I have just mentioned, plus the income from the $4,000,000 fund provided by Mr. Carnegie, and the amount of payments which have been made for pensions and relief.

By Mr. Reed:

Q. These figures you have checked up in the same way as the others?

A. These I compiled myself.

Q. Have you yourself compiled any as to the cost of the voluntary accident relief plan which has been described?

A. I have verified and checked up the returns received from the subsidiary companies showing the amount of expenditures they have made for this purpose during the years 1910, 1911 and 1912.

Q. During those years, Mr. Filbert, how much has been spent by the Corporation and its subsidiaries in voluntary accident relief?

Mr. Dickinson: Objected to as irrelevant.

The Witness: During the three years combined the sum of $5,304,321.16.

By Mr. Reed:

Q. That is the plan under which payments are made to injured men regardless of liability?

A. It is.

Q. Have you compiled any figures or prepared any figures or made any computation of the cost to the Corporation of its plan for stock subscription by employes?

A. I have. I have compiled these figures myself from our records.

Q. Will you state, then, just what that plan has cost the Corporation up to date or up to the beginning or whichever is the easiest way to give it?

Mr. Dickinson: Objected to as irrelevant.

The Witness: At the close of 1912 the charge to the Corporation for distributions to employes who have subscribed under this plan has totaled $6,218,837.59.

By Mr. Reed:

Q. How much stock have these employes subscribed for, Mr. Filbert?

A. I do not believe I have got it in the total; I can add it up.

Q. My impression was that you had a memorandum, that you had prepared a memorandum?

A. Oh, yes, I guess I have. They have subscribed for an aggregate of $30,596,400 par value of preferred, and $10,099,600 par value of common stock.

Q. At the end of last year how many employes had acquired stock under this plan; have you computed that number?

A. At the close of 1912 there were 32,248 employes who had acquired stock and then held the stock. In addition to that there may, and I know there are other employes who have acquired stock which are not included in this count, for the reason that at the end of each five-year period we discontinue keeping track of all employes who have purchased stock prior to the five years preceding that date. Now, I know that there are employes, and there is also a large amount of stock

which is owned by employes that is not included in the total which I have given you for the reasons stated.

Q. You have included here only those who were listed?

A. Only those who are stockholders of record and are still within this five-year cycle, so to speak.

Q. If you could give us any estimate of the probable number of those employes who have become sockholders in this way and who are beyond your five-year limitation it would be very helpful.

A. I could not estimate it; I could only guess.

Q. How many shares have been bought within this last five-year period by employes, of course, under this plan?

MR. DICKINSON: Objected to as irrelevant.

THE WITNESS: Of preferred stock, 127,040, and of common, 100,996.

By MR. REED:

Q. That is shares?

A. Yes; a total of about $23,000,000 par value.

Q. There has been some suggestion in this case of savings or expected savings by the prevention of cross-shipping; that is, after the Steel Corporation had acquired its plants at different localities it was enabled to ship to its customers from the nearest producing point, and thus save in freight charges what the separate plants would independently have expended, or what their customers would, which all comes to the same thing in the end. Are you able from the information which you now have to state any account of the savings which have been made by the prevention of cross-shipping in that way?

MR. DICKINSON: That is objected to because it has not been shown that the witness has the information upon which he could base any reasonable and accurate estimate, which is involved in the question.

MR. REED: The question is whether he is able to do it; I have not asked him to give any figures, but simply to testify as to his ability.

THE WITNESS: No, sir; I have no information.

By MR. REED:

Q. Have you any information which would enable you

to give us such a statement as to any of the subsidiary companies?

A. No, it is not possible, in my opinion, to present any figures showing what that amount of saving has been.

Q. Have you made any effort to collect information from the subsidiaries?

A. I have.

Q. Which would enable you to prepare such a statement?

A. I have.

Q. Have you been successful?

A. No, sir.

Q. There has been some testimony here as to information furnished voluntarily by the Corporation to assist the different governmental investigations, particularly those by the Bureau of Corporations. Through whose office did that information pass in the Corporation?

MR. DICKINSON: Objected to as irrelevant.

THE WITNESS: Through my office.

By MR. REED:

Q. Who for the Corporation had charge of the furnishing of that information to the Government?

A. Under the direction of Judge Gary, chairman, I furnished the information. Of course I was always in close touch with him and took my orders from him in that connection.

Q. We are anxious to get some description of the quantity of material which has been furnished to the Government by the Corporation.

MR. DICKINSON: I think, Mr. Reed, it will save a little time if I just except to that now as irrelevant and incompetent. I should have done that earlier.

By MR. REED:

Q. Can you tell us first what subjects were covered by the information which was furnished in that way?

A. Yes.

Q. Will you do so, please?

A. In the first place, we gave them everything that they asked for which it was possible for us to supply, irrespective

of whether we had the information collected, condensed, or whether we had to make original search for it, and to a very large extent original compilations, either by abstracting and collecting the information anew or by restating our statistics in order to present them on the basis that they wanted them or had asked for them.

Q. Do you mean that you allowed their clerks to come in and compile this information from your books, or that you actually hired clerks to do it for them?

A. We hired clerks. They did not come in and compile any information from our books; they verified subsequently the information which we furnished them from our books and records.

Q. And if new compilations had to be made who made them?

A. We did.

Q. And then furnished them to them for their information?

A. For them at their request.

Q. Did you throw open your books to them for verification of these things?

A. Certainly we did.

Q. Did they take advantage of the offer?

A. They did.

Q. Please go ahead and tell us the subjects on which they got information in that way.

A. We gave them details, so far as we could ascertain, of the organization of the subsidiary companies, including the properties and assets acquired of those companies and the capital issued therefor, and the indebtedness which those companies assumed or issued. We gave them various statements covering the operations and affairs of the subsidiary companies prior to the organization of the Steel Corporation. We gave them details of the organization of the Steel Corporation and the properties and assets it acquired, the capital issued and the debt assumed or issued. We gave them particulars of the operations and affairs of the subsidiary companies and of the Corporation subsequent to the date of its incorporation, all in the greatest detail and covering a very wide range

of subjects. Among other things, we gave production or output of all classes of materials and products by plants and mills. We gave cost sheets for all principal products, as called for by them, by plants and mills; also detailed statements of operating expenses not represented in product cost sheets. Those were given for the years 1902 to 1906, inclusive, and to a very large extent for the years 1907 to 1910, inclusive, with respect of all these products and departments which they requested.

Q. That must have made a very large number of cost sheets?

A. We furnished them 3,272 cost sheets and production sheets of various kinds, each one of which had on it hundreds of figures.

Q. Go ahead with the subject. I did not mean to interrupt you.

A. We gave them in detail profit and loss or income accounts of each subsidiary company for each year from 1902 to 1906, inclusive. They did not request it for other years. These statements showed the tonnage shipped and the price received for each class of output, from iron ore on to finished products, and in most cases the average price received for each month's shipments. Under that heading we furnished them 495 large typewritten sheets filled with figures and statistics, bound into five large volumes.

Q. 495?

A. Yes. Those are profit and loss exhibits and shipments. We gave them schedules showing the orders or business booked in each of the five years from 1902 to 1906, inclusive. They did not request it for later years. Originally they asked for only three years, and subsequently extended the request to include five years. These schedules included the tonnage booked by orders daily or monthly of the several principal classes of steel products, and the prices at which such orders were received, reduced down to an f. o. b. mill basis. They also showed all sliding scale contracts or term contracts separate from flat orders for material.

Q. Who requested that?

A. It was requested by the Bureau.

Q. What quantity of material did that cover?

A. That information, when finished, constituted 286 bound volumes of typewritten matter.

Q. And who in the Bureau of Corporations asked that?

A. That was contained in the original request which Commissioner Garfield and Mr. Baldwin handed to Judge Gary in the fall of 1905, and which subsequently Judge Gary turned over to me to undertake the compilation of.

Q. But are not these prices published in the trade journals?

A. Well, the representative of the Bureau explained to me——

Q. Who was he, first?

A. Mr. William H. Baldwin. He explained to me that the reason they wanted that information——

MR. DICKINSON: I object to any explanation, simply as irrelevant.

By MR. REED:

Q. Go ahead, Mr. Filbert.

A. He explained to me that the reason they wanted that information—and he explained this because we showed him what an enormous job it would be, and he realized it—was because he knew from his experience in the steel business that the published prices in the trade journals from week to week did not truly represent the average price at which steel products were sold.

MR. DICKINSON: I object to the witness stating what Mr. Baldwin knew, as being incompetent, irrelevant and hearsay.

By MR. REED:

Q. That is what Mr. Baldwin stated to you?

A. He stated that to me.

MR. DICKINSON: I object to that as being hearsay.

By MR. REED:

Q. Mr. Baldwin had had experience in the steel business, had he?

A. He was an old steel maker.

Q. Mr. Filbert, you have been in the steel business yourself since 1898?

A. Yes, sir.

Q. Are you able to tell us from your own knowledge whether that is a fact?

A. I know it is. I know that the great bulk of the steel, or rather of the steel products, in the steel business, moves in sort of waves; and that on rising markets the largest tonnage is sold at the lowest quoted prices, and that after the mills get filled up or substantially filled up, and the prices correspondingly rise, those prices remain firm for weeks and weeks, but that a comparatively small tonnage is sold at those prices, and therefore any average price for steel over a period, as taken from the trade journals week by week, and added up and divided by the number of weeks quoted does not indicate the average price received for steel.

Q. You know that, of your own knowledge, do you?

A. I do.

Q. I have interrupted you in giving the list of the subjects on which you furnished information to the Government, Mr. Filbert. Will you just take it up where you left off?

A. We furnished them schedules showing in the greatest detail the purposes for which expenditures were made from the formation of the Steel Corporation to the close of 1906, for new property acquired, for additions, extensions, betterments, for new ore properties purchased, for new coal properties purchased, and, in fact, all expenditures that were made on capital account. This was done in great detail. It took us nearly two years to make it.

Q. Was there anything else?

A. We furnished them details, by companies or groups of companies, of various operating results which in our annual reports were stated in composite detail for all the subsidiary companies.

We furnished them details and particulars concerning properties owned, such as annual capacity as distinguished from annual production of plants, the particulars of ore reserves of unmined coal, and so forth. That "and so forth" means limestone. We furnished them details of the transactions under which the various companies acquired subsequent to 1901—referring to the Union Steel, the Clairton

Steel, the Tennessee, and so forth—were purchased, together with the particulars of the properties these companies owned or controlled, and their assets and liabilities at the time we obtained them. We furnished them particulars and details of wage rates in effect at various times since 1901 and the earnings of employes in various occupations. Under that caption alone we furnished them 1,006 sheets of closely written typewriting.

In addition to that we furnished them a great mass of miscellaneous information relating to operating matters of all kinds, including the mining of ore and its distribution to districts, the quantity that went to each district, the freight paid on the same to each district; and the same for coke and coal and limestone. We furnished them also information relating to the transaction of business between the subsidiary companies themselves in the sales of raw and semi-finished materials—the ore to the furnace companies, coke to the furnace companies, pig iron and billets between the companies, the prices at which the same were sold, and we furnished them a great deal of matter relating to financial matters and transactions. We wrote them hundreds and hundreds of letters explaining and elucidating and giving them details of information that had been furnished them on these statements and reports which I have mentioned.

Q. When was all this furnished, Mr. Filbert?

A. We commenced to furnish that information to them about the the 1st of January, 1906, probably a few weeks after, and we continued furnishing that information until the early part of 1910. You see, they had kept all the time expanding and extending the period for which they wanted information and the scope of it. Then in the early part of 1910 they came with a new request covering information and data relating to offairs prior to the organization of the United States Steel Corporation, of not only the subsidiary companies whose stocks we acquired, but the old concerns way back. We finished furnishing that information to them along about the middle of May, 1911. Then there was a lull, and in November, 1911, they came again for a wide range of informa-

tion, which it took us about four or five months to finish up and furnish them.

By Mr. Dickinson:

Q. Just state the character of that.

A. That latter was relating to production and details of cost statistics.

By Mr. Reed:

Q. And that was furnished, was it?

A. It was, sir.

Q. Now, in addition to the Bureau of Corporations, have you supplied information to any other Government departments or bureaus at Washington?

Mr. Dickinson: Objected to as irrelevant and incompetent.

The Witness: We have to the Stanley Committee, an immense lot of it.

By Mr. Reed:

Q. To anybody else?

A. To the Bureau of Labor another immense lot, but of course that all related to wages and conditions of employment.

Q. Do you know whether the Corporation has furnished any information to the Treasury Department or the War Department from time to time?

A. Not through my department.

Q. Not through your department?

A. No, sir.

Q. Just in your department alone, Mr. Filbert, can you give us any idea of the cost of the compilation of this material for these Government investigations?

Mr. Dickinson: Objected to as irrelevant and incompetent.

The Witness: In the early part of 1910, after we had completed furnishing them all the information covered in their first general request, with the supplements thereto, I made a careful estimate, and my figures showed that we had

spent up to that time approximately $200,000, and that did not include any charge for a proportion of my own time or the time of the auditors of the subsidiary companies, or my two chief assistants, who worked on this thing right along, but not exclusively. I might say that according to the Government's own report, it cost the Government $106,000.

By Mr. Dickinson:

Q. You are not losing any sympathy on that?

A. Well, I think we contributed to that individually and as a corporation.

By Mr. Reed:

Q. Mr. Filbert, can you tell us the number of copies of the annual report of the Corporation that have been published? take the first annual report, please.

A. We printed 75,000 copies of the annual report for 1902, which was the first full and complete annual report, the previous one having been designated as a preliminary report.

Q. I am asking now about the regular annual report which goes into all the affairs of the company in so much detail, which is already in evidence.

A. We printed 75,000 for 1902; for 1912 we printed 106,000. We distributed all except probably 2,000 of these reports each year, our plan being when the new year comes around to have on hand about 2,000 of the old reports.

Q. Did you give the number for 1911?

A. For 1911 we printed 100,800.

Q. For 1912?

A. 106,000.

Q. Those are sent to your stockholders, are they not?

A. They are sent to every stockholder.

Q. And to what other persons?

A. They are sent to all leading daily American newspapers and two German newspapers published in New York and in Brooklyn, and they are given to the trade papers and to all the financial bureaus which get our publications, like the Financial and Commercial Chronicle, Dow, Jones & Company, and to a vast number of newspapers in the other cities, and to the Associated Press in New York.

Q. To all the press associations, like the United Press?

A. Yes.

Q. The Associated Press?

A. Yes. In fact, they are sent to a very large mailing list, including all the principal officials of the government, such as the secretaries of departments, and the Attorney General and the Bureau of Corporations, Bureau of Labor, and to a large number of Senators and Congressmen and a very wide range of parties.

Q. Mr. Severance is anxious to know if the President gets one. Does he?

A. I cannot answer that; I do not mail him one.

(Whereupon a recess was taken until two o'clock p. m.)

AFTER RECESS.

W. J. FILBERT,

the witness under examination at the taking of recess, resumed the stand.

DIRECT EXAMINATION (Continued).

MR. REED: Here are these blank furnace comparative cost sheets which I would like to have marked as exhibits.

(The statements referred to, consisting of two sheets, were marked, for identification purposes, Defendants' Exhibits Nos. 74 and 75, respectively.)

By MR. REED:

Q. Mr. Filbert, I show you Defendants' Exhibit 74 and ask you to state what that is.

A. That is a specimen form of the comparative detail statement of cost above and practice at blast furnace producing pig iron, which we compile monthly and send out to the various officials of the subsidiary companies, showing comparative and competitive costs.

Q. I also show you Defendants' Exhibit 75 and ask you to state what that is.

A. That is the specimen form of a similar statement showing production cost in detail above of Bessemer steel ingots, which we likewise compile monthly and send out to our subsidiary companies.

Q. By the phrase "details above," what do you mean?

A. Details of cost above means the various items of expense which are comprehended in the aggregate total designated as cost above, that cost above being the expense of production above or beyond the cost of the materials which enter into the manufacture.

Mr Reed: I offer in evidence Defendants' Exhibits 74 and 75.

Mr. Dickinson: These are excepted to as irrelevant.

(The two sheets previously marked for identification were thereupon marked "Defendants' Exhibit (Filbert) No. 74, June 16, 1913," and "Defendants' Exhibit (Filbert) No. 75, June 16, 1913," respectively, and will be found in the volume of exhibits.)

By Mr. Reed:

Q. Mr. Filbert, before we adjourned for lunch you were speaking about the publication of the annual reports of the company. Have you had opportunity since then to examine the mailing list of those annual reports of recent years, and, if so, can you state to what government officials those reports are sent or have been sent?

Mr. Dickinson: Objected to as irrelevant.

The Witness: To the President of the United States, the Vice-President, the members of the Cabinet and various other bureau heads, to the Senators of the United States, to Congressmen from those States in which the Corporation and subsidiary companies have plants or properties located, and also to the members of the important or the principal leading committees of the House of Representatives.

By Mr. Reed:

Q. Are they also published among the State governments?

A. And copies of those reports are mailed to the Governors of all states in which the subsidiary companies have properties.

Q. In speaking about the material information which you have furnished to the different government investigations you said nothing about the tariff hearings of the Ways and Means Committee——

MR. DICKINSON: This is excepted to as irrelevant.

Q. (Continuing) Has information been furnished in any quantity to that committee?

A. We furnished a considerable quantity of information to the committee, of which Congressman Payne of the Ways and Means Committee was chairman in 1908 and 1909.

Q. Aside from that has any information been furnished, to your knowledge, to any persons acting in a public capacity or about to make publication of the facts?

MR. DICKINSON: Excepted to as irrelevant.

A. Yes, we have at times furnished information relating to the affairs of the Corporation to such persons as you designate.

Q. Does that include magazine writers and Congressmen about to make speeches on the subject?

A. I do not know as to Congressmen who were going to make speeches; I cannot testify as to that, but I know we furnished it to magazine writers.

Q. Has it always been convenient, Mr. Filbert, for the Corporation to furnish this, and for its officers to drop their company business and turn to these things?

MR. DICKINSON: Excepted to as irrelevant.

THE WITNESS: Well, very frequently it has been considered by me and others as rather arduous and irksome and as interfering and breaking in on the conduct of the regular normal business of our department.

By MR. REED:

Q. What has been Judge Gary's attitude toward the furnishing of such information and the general publicity of the company's affairs?

MR. DICKINSON: Objected to as irrelevant.

THE WITNESS: He has always favored it; many times I

have gone to him when we have had the requests from governmental departments and others, and rather—I won't say protested, but stated that this made a good deal of extra work and annoyed us in prosecuting the regular work of the office, but he has always said, "Well, we will furnish it," and has authorized it, even though it necessitated incurring extra expense.

By Mr. Reed:

Q. Mr. Filbert, what knowledge have you of the affairs of the Union Steel Company since it was acquired by the Steel Corporation?

A. Well, I think I know a great deal about its affairs.

Q. Has your connection with that company been any different from your connection with the other subsidiaries?

A. Yes, I have been a director and secretary of the Union Steel Company since the time the Corporation formally acquired the stock.

Q. Have you been through the plants yourself?

A. I have. You refer to the steel plants at South Sharon and Donora?

A. Yes, sir.

Q. Seen its blast furnace plants?

A. Yes, sir.

Q. Then you have personal knowledge of its work in addition to the reports that have come in to you from the operating officials?

A. Yes, I have.

Q. Can you tell us what the production of the Union Steel Company in pig iron and in ingots was in the years 1902 and 1903?

A. The production?

Q. The production, and having given that, please give us also its capacity for both of those products in both of those years, 1902 and 1903?

A. The production of the Union Steel Company in 1902 of iron and ingots was at South Sharon only; there was no production at the Donora plant; of iron the South Sharon furnace produced 102,380 tons, and of ingots 236,767 tons; likewise, in 1903, the only production of these two commodities at the

Union Steel plants was at South Sharon, and there were produced of iron, 82,119 tons, and of ingots 182,688 tons.

Q. There was a falling off in business in the fall of 1903?

A. There was; and during the major part of 1904.

Q. What were the capacities for pig iron and ingots in those two years?

A. In 1902, or rather at December 1, 1902, as of which date we acquired the property, the annual capacity of pig iron was 150,000 tons, and of ingots 350,000 tons, these being the capacities of the South Sharon blast furnaces and the South Sharon open-hearth furnaces. At July 1, 1904, the capacities of the Union Steel Company in these two products was exactly the same as at December 1, 1902.

Q. I suppose you had nothing to do with the making of the contract for the purchase or acquisition of the Union Steel Company's stock?

A. Nothing whatever.

Q. After that contract had been made did you have anything to do with the ascertainment of the price to be paid?

A. I did.

Q. What was paid for the Union Steel properties other than unmined ore and coal, real estate and the two steamers?

A. The amount?

Q. No; how was the amount determined; that is what I mean?

A. The exact amount of expenditures which had been made by the Sharon and the Union companies in the construction and development of their properties.

Q. Did you make any audit of their books to determine what that amount had been?

A. I did.

Q. And that was the amount that was paid, was it?

A. That was the amount that was paid.

Q. What properties of the Union Steel Company at its Donora and at its Sharon plants were put in at other than cost?

A. The plant real estate at Donora and the plant real estate at South Sharon; the unmined ore owned by both the Sharon Steel Company and Union Steel Company interests,

and the unmined coal similarly owned by the Sharon Steel Company and the Union Steel Company interests; and two lake vessels.

Q. How about improvements to the ore mines and coal mines?

A. The improvements which had been made at the mines went in at the exact amount that had been expended by them on the properties. There was one exception there, that at the Sharon mine, the stripping expense went in at 50 per cent. of what they had expended.

Q. That went in at less than cost?

A. At less than cost.

Q. This audit, you say, was made by you personally?

A. It was; that is, it was made under my direction. I did a large part of the work myself, but I had assistance there.

Q. Coming to the Clairton Steel Company, Mr. Filbert, what was the production in pig iron of the Clairton Steel Company in the year 1904?

A. 232,074 tons.

Q. What was the capacity of the Clairton Steel Company's blast furnaces at that time?

A. 420,000 tons.

Q. Do you know, of your own knowledge, whether the Clairton Steel Company had ever been offered to the Steel Corporation for sale before it was actually bought?

A. Yes, sir, I do.

Q. When was it first offered?

A. It was first offered to the Steel Corporation in the early part of 1903; I think in March.

Q. Did you take any part in that negotiation?

A. No. I was instructed by Judge Gary to be prepared to make an examination of the affairs of that company as shown by its books and records, in case that negotiation should reach a point where they could make a final arrangement for the purchase; but that fell through.

Q. Why did it fall through?

A. I cannot answer that. I was simply informed by Judge Gary that the entire negotiations were off.

Q. Did the Clairton Steel Company people bring the prop-

erty to the Steel Corporation, or did the Steel Corporation seek its purchase at that time?

A. I cannot answer that.

Q. You do not know about that?

A. No, sir.

Q. What was the next time that there was a discussion about its purchase?

A. In July of the same year, 1903. At that time I know that the proposition was brought to the Corporation by the Clairton Steel Company people. I was present at the time that Mr. Snyder brought the proposition to Judge Gary and Mr. Corey.

Q. That is, Mr. W. P. Snyder?

A. Mr. W. P. Snyder.

Q. Of Pittsburgh?

A. He was then president of the Clairton Steel Company.

Q. What was the result of those negotiations of July, 1903? Was any agreement reached?

A. A tentative agreement was reached under which the Corporation agreed to purchase the property under certain conditions, providing the representations which had been made by the Clairton people as to the money which had been invested in the property and the condition of its assets and liabilities would be verified upon an examination of its books and records.

Q. Was such an examination made?

A. It was.

Q. Who made it?

A. I made it.

Q. Did you make a report?

A. I did.

Q. To whom?

A. I made a report to Judge Gary.

Q. What action was taken by the Steel Corporation after the making of your report?

A. The proposition was turned down; they rejected the purchase.

Q. Who acted for the Steel Corporation?

MR. DICKINSON: I would like to ask if this proposition was in writing, the tentative agreement that you spoke of?

THE WITNESS: My recollection is there was a memorandum of some kind; that is my recollection.

MR. DICKINSON: I object to his stating what it was. The memorandum is the best evidence and ought to be produced, and I object to his testimony as being secondary and not the best evidence.

By MR. REED:

Q. Have you that memorandum?

A. No, sir. It would not be in my possession, anyhow.

MR. REED: The suggestion is that that appears in the minutes.

MR. COLTON: I thought that was probably in, but I was not sure.

MR. DICKINSON: Do you find it?

MR. REED: I have an extract from the finance committee minutes, page 598 of Volume II, which contains no mention of any written agreement.

By MR. REED:

Q. Who turned down the proposition for the Steel Corporation?

A. The finance committee.

Q. What was the next that was heard of this suggestion of purchasing the Clairton Steel Company?

A. In 1904, I should say the last of March or the first part of April, the proposition was again brought to the Steel Corporation by Mr. Park and Mr. Smith.

Q. That is William G. Park?

A. I think so; Will Park, anyhow.

Q. Of Pittsburgh?

A. Yes; and Frank B. Smith, the president of the Crucible Steel Company, which company owned the stock of the Clairton Steel Company.

Q. What action was taken on that proposition that was then brought up?

A. The matter was referred to a special committee con-

sisting of Judge Gary, Mr. Corey and myself, and we met with Mr. Park and Mr. Smith for several days considering the matter and the terms, and finally the finance committee, on the report of this special committee, decided to accept the property, or it may be that it was referred to this special committee with power; I am not certain of that; but the fact is that it was decided to take the property on the terms at which it was offered, and the matter was placed in the hands of myself and Mr. MacVeagh, our counsel, to draw up a formal agreement for purchase and sale.

Q. Did you make an audit of the Clairton Steel Company or an examination of the books?

A. Between the time of the signing of this agreement of purchase and the actual transfer of the property I did make an examination of the books of the company.

Q. Are you able to state whether the price at which the Steel Corporation bought it was more or less than had been spent by the Crucible Steel Company?

A. It was less.

Q. How much less?

A. Approximately $4,000,000. It was three million, nine hundred and some odd thousand dollars.

Q. That is, the price paid by the Steel Corporation was some three million, nine hundred thousand dollars less than the property had cost the Crucible Steel Company?

A. That is correct.

(Here a paper was marked temporarily for identification purposes Defendants' Exhibit No. 76.)

MR. REED: I show you Defendants' Exhibit No. 76 and ask you what that is.

A. That is a statement which lists the plants of the National Tube Company January 1st, 1899, 1901 and 1912, together with the number of furnaces at each of those plants and the estimated annual capacity; also a statement of all other manufacturers in the United States of welded pipe on the dates named, listing similarly the number of pipe furnaces and their estimated capacity.

Q. Who made that statement?

A. I did.

Q. Did you prepare it personally?

A. It was prepared personally by me.

Q. Where did the information come from?

A. From data that had been furnished us by our National Tube people.

MR. REED: I offer it in evidence.

(The statement referred to was offered in evidence and marked "Defendants' Exhibit (Filbert) No. 76," and will be found in the volume of exhibits.)

By MR. REED:

Q. Have you a statement there also of the production of iron and steel by the Tennessee Coal, Iron & Railroad Company in the year 1907?

A. Yes.

Q. Prepared by whom?

A. I prepared the statement.

Q. Personally?

A. Yes.

Q. From information reported to you at that time or about that time?

A. From returns made to us by the Tennessee Coal, Iron & Railroad Company subsequent to the first of November, 1907.

Q. Who computed these percentages you have here?

A. I did.

Q. Where did you get the information as to the total production in the United States for that year?

A. From the American Iron & Steel Association's statistics.

(Here another paper was marked temporarily for identification purposes "Defendants' Exhibit No. 77.")

By MR. REED:

Q. Is this statement correct?

A. That statement is correct.

MR. REED: I offer Exhibit No. 77 in evidence.

(The statement referred to was offered in evidence and

marked "Defendants' Exhibit (Filbert) No. 77," and will be found in the volume of exhibits.)

Q. Still on the Tennessee Coal & Iron Company, Mr. Filbert. Have you yourself prepared a statement showing the amount of cash advanced by the Steel Corporation up to November 1st, 1911, to assist the Tennessee Coal, Iron & Railroad in its new construction and renewal work?

A. Yes, sir.

Q. What is the amount?

A. The actual cash advanced by the Steel Corporation to the Tennessee up to the date named was $13,509,000; in addition, from the time we acquired the Tennessee up to the date named that company had earned $5,651,982, which had been left in the property; that is to say, the Steel Corporation as a stockholder had received no dividends on its stock; therefore that amount, as well as the $13,509,000 we advanced, must be considered as having been put into the property by the Corporation, thus making a total of $19,160,982.

Q. Up to the first of this year what are the figures?

A. We had actually advanced in cash $13,959,000, and similarly no dividends have been drawn by the Corporation on the stock owned, but all the profits left in the company, and this amounted to $8,239,122, making a total of $22,198,122.

Q. Mr. Filbert, are you able to tell us the amount of production of the Tennessee Company in the year 1907 in heavy T rails, standard T rails?

A. It appears on that statement which was just put in evidence. The production you asked for?

Q. Production of the Tennessee Coal, Iron & Railroad Company.

A. It appears in that statement that was just put in evidence. My recollection is that it was 149,000 tons.

MR. COLTON: That appears on Exhibit 77.

By MR. REED:

Q. Can you tell us what the average f. o. b. mill price received for these rails was during that year?

A. They did not ship their entire production; they only

shipped 142,409 tons, and for that tonnage they received f. o. b. mill $28.76.

Q. Can you tell us what the mill cost of producing those rails was during that year?

MR. DICKINSON: Excepted to as irrelevant.

THE WITNESS: The mill cost was $29.48. The overhead charges for administration, taxes and general depreciation were not distributed by the Tennessee Company to their respective products, but those charges I estimate must have been at least $2 a ton, making a total commercial cost of $31.48 about.

MR. DICKINSON: Objected to as being a mere guess, not based upon any knowledge.

By MR. REED:

Q. This cost of $29.48 includes nothing more than the mill cost?

A. The mill cost.

Q. On what basis do you make that estimate of $2 for overhead cost?

A. On the basis of the aggregate amount of expenditures and charges for the purposes I have mentioned, and relating it to the product of the company which they sold, apportioning it on the basis of the mill cost of the respective kinds of products which they so sold.

Q. Is that the usual way in which it is done in the companies controlled by the Steel Corporation?

A. It is.

Q. Is that the usual way it is done in other companies?

A. I cannot answer that; I do not know how other companies do it.

Q. Is it the fair way to do it?

A. It is the most equitable way that has been evolved, in so far as our companies are concerned. The question is one which has been studied very carefully and very fully, and that is the method we proceed on as indicating the best manner of averaging or apportioning that fixed overhead expense to the different products.

Q. Have you prepared any statement or have you any in-

formation as to the production of T rails by the Illinois Steel and the Lorain Steel Companies in 1897 and 1898?

A. Yes, I have.

Q. I wish you would give us those figures.

A. In 1897 the Illinois Steel Company produced 408,467 tons of heavy rails, and the Lorain Steel Company produced 20,240 tons. In 1898 the Illinois Steel Company produced 538,599 tons, and the Lorain Steel Company produced 50,312 tons.

Q. At what point were those rails manufactured by the two companies?

A. By the Illinois Steel Company at South Chicago, and by the Lorain Steel Company at Lorain, Ohio.

Q. How far are those places apart?

A. About 325 miles.

Q. A tube plant has been built by the Lorain Steel Company, I believe, at Lorain, Ohio?

A. Yes, sir.

Q. Can you state whether that was built by the Steel Corporation?

A. It was built by the Lorain Steel Company and the money supplied to it by the Steel Corporation.

Q. That is what I mean. That has been built since April, 1901, has it?

A. Oh, yes; yes, sir.

MR. DICKINSON: Will you give the date, while you are at it?

THE WITNESS: They started construction there in the summer or early fall of 1903.

By MR. REED:

Q. And the money that went into that, you say, was advanced by the Steel Corporation to the Lorain Steel Company?

A. Yes, sir.

Q. Mr. Filbert, have you prepared any statement showing the number of open-hearth furnaces of the Steel Corporation and its subsidiary companies?

A. I have, sir.

Q. Please produce it.

(The witness produced a paper which was temporarily marked, for purposes of identification, "Defendants' Exhibit No. 78.")

By Mr. Reed:

Q. Calling your attention now to Defendants' Exhibit No. 78, the statement you have just produced, entitled "Number of open-hearth steel furnaces as of January 1 in each year from 1900 to 1913, inclusive, giving the estimated annual capacity of the same," I wish you would state who prepared that statement.

A. I prepared that statement.

Q. And upon what information did you prepare it?

A. On information furnished us regularly from time to time, except as to January 1, 1900, by the various subsidiary companies.

Q. Is the statement correct?

A. It is. I can add to that, that I know, of my own knowledge that these companies have these furnaces.

Mr. Reed: We offer Defendants' Exhibit No. 78 in evidence.

(The statement was thereupon marked "Defendants' Exhibit (Filbert) No. 78, June 16, 1913," and will be found in the volume of exhibits.)

By Mr. Reed:

Q. Have you also prepared, Mr. Filbert, any statement of the open-hearth heavy T rail production of the country by years?

A. I have prepared a statement which shows that information, and some other information. It shows also the Bessemer rail production; it shows the total rail production of each, Bessemer rails and open-hearth rails, and all other rails.

Q. And it shows the percentage which Bessemer and open-hearth and other rails bore to the total of all rails?

A. Yes, sir.

(The paper referred to was marked temporarily for identification purposes "Defendants' Exhibit No. 79.")

Q. Did you prepare Exhibit No. 79 yourself?

A. It was prepared under my direction, and after it was completed I checked it against the record.

Q. Did you check it with sufficient care to be able to say whether it is or is not correct?

A. It is correct in accordance with the record of statistics.

Q. What statistics did you use in the preparation of this?

A. The statistics of the American Iron & Steel Association.

Q. Their published reports?

A. Yes, sir.

MR. REED: We offer Exhibit No. 79 in evidence.

(The statement referred to was offered in evidence and marked "Defendants' Exhibit (Filbert) No. 79," and will be found in the volume of exhibits.)

By MR. REED:

Q. Are these open-hearth rails, which show such an increase from the year 1901 down to 1912, rails which are sold at the price of $28 a ton?

A. No.

Q. How does the price of open-hearth rails range?

A. Higher than Bessemer rails.

Q. This 63.3 per cent. of the rails made in 1912 appears to have been open-hearth rails; is that correct?

A. That is correct.

Q. Which were not sold at this $28 price?

A. That is correct.

MR. REED: You may cross examine, Judge.

CROSS EXAMINATION

By MR. DICKINSON:

Q. Referring to this Exhibit 42 that was first taken up, did you furnish the original one to Mr. Farrell, the one that was put in evidence before you made the corrections?

A. The original one was typewritten from the rough; as the figures were drawn off from the record a statement was prepared on the typewriter, and then that statement was what we term duplicated, and a number of copies were taken from

it on a duplicating machine. He was given one of those copies.

Q. By your office?

A. By me.

Q. Did you check it up before you gave it to him?

A. I did not.

Mr. Dickinson: Defendants' Exhibit No. 43 is objected to as irrelevant; it is also objected to because it embraces a comparison between years one of which is a period, to-wit, 1912, after the filing of the petition in this cause.

By Mr. Dickinson:

Q. These figures that are given in Exhibit 43—probably you had better look at your paper?

A. The one you have before you?

Q. Yes; do you know it?

A. Yes.

Q. Those are composite figures, are they not?

A. They are the aggregate figures.

Q. I understand, aggregate figures, that is to say, this paper we have here is a copy of a paper which shows figures corresponding to those here, which figures are aggregations of figures derived from various sources?

A. These figures are aggregates of figures returned to us from various sources.

Q. Take, for instance, this first item here, gross tons, 1904, 1,001,716; that figure embodies what sources of information?

A. Embodies what sources of information?

Q. Yes.

A. I explained that this morning. Do you wish me to go over it again?

Q. I think I will go into it a little more in detail than you did this morning.

A. Very well. We receive monthly from each of our subsidiaries a return of the shipments of the products of various kinds which they make from each of their mills, except in the case of the American Steel & Wire Company; the return which they make is the aggregated shipments from all mills. Those returns show the tonnages of the various commodities, the gross f. o. b. mill selling price, the mill cost and the net

profit. Those returns are an integral part of the general profit and loss account of the company, which is another return. That general profit and loss account is an exhibit, too, and forms a part of the general balance sheet. The general balance sheet is a transcript from the general books of record of the companies, and that balance sheet and profit and loss statement is audited under our direction.

Q. Now, taking this particular figure for 1904, to which I have called your attention, how far back did your personal examination go with respect to the figures upon which this is based, the next thing behind this was what, profit and loss account?

A. My personal examination extended to verifying the accuracy of these total figures as shown by that statement against the record, which we in turn compile and write up from these returns which come to us, and also the verification of the accuracy of that record against the general balance sheet and the accounts as combined and taken into the annual report of the United States Steel Corporation, consolidated figures.

Q. If you will just leave out "we" and say "I."

A. Well, I cannot say "I."

MR. REED: You want the facts, do you not?

MR. DICKINSON: Yes, I want the facts in connection with his actual work; that is what I want.

By MR. DICKINSON:

Q. Take this figure of gross tons, what was the next source nearest to this from which this came? I mean taking your records now in their chronological order, what was the first step below this?

A. A record which summarizes the returns received on these monthly reports from the subsidiary companies for the purpose of getting at an aggregate figure of the products shipped by these subsidiary companies during the year.

Q. That record that you spoke of, did you make that?

A. Did I personally make it?

Q. Yes.

A. No.

Q. Did you compare this with it?

A. I compared this total with the trial balance from that record.

Q. From that record?

A. Yes.

Q. And is it upon that or from that you derive that figure?

A. Yes, because I compared the trial balance with the record.

Q. With what record?

A. With the record to which I referred.

Q. You compared the trial balance with that record?

A. Yes.

Q. What else did you personally do?

A. Personally I did not do anything beyond that. I did not foot up this record to see if it was right, but I know it must be right because it balances.

Q. Is that as far back as you went?

A. That is as far back as I went.

Q. In reaching this figure?

A. Yes.

Q. Take the next figure, selling value 1904, $27,263,915; from what did that figure come?

A. Identically the same source.

Q. And in the same way?

A. And in the same way, the figures of tonnage and money being carried in parallel columns.

Q. And your personal connection with it was to the same extent?

A. It was.

Q. Now, does that apply to all these figures here, or is there any difference in them?

A. It applies to all these figures except the percentages of increase, I think, on that statement, which are, of course, calculated from the base figures on the statement. That is a mere matter of calculation.

Q. A mere matter of calculation or comparing the two, is it?

A. Yes.

MR. DICKINSON: This is excepted to on the ground that it is secondary, Exhibit 43, and the testimony based upon it.

By MR. DICKINSON:

Q. Mr. Filbert, coming down to Exhibit 44. No. 44 is a statement showing the tonnage of exports of iron and steel of the United States Steel Corporation interests and embracing the years, inclusive, from 1902 to 1912.

MR. DICKINSON: We object to that as irrelevant, and we also object because it embraces a comparison between years, one of which is the year 1912, a period which is after the filing of the petition in this cause.

Q. (Continuing) Now, Mr. Filbert, this began with the year 1902. Can you give us the tonnage of exports of iron and steel of the subsidiaries of the United States Steel Corporation with the several articles here set out for the year 1901?

A. I cannot give that completely, for the reason that in that year some of the subsidiary companies did not, in their statistics and records as they filed them, make a separation or division between their export and their domestic shipments.

Q. Now, which of them did make them?

A. The American Steel & Wire, the Illinois Steel, the Lorain Steel Company, the National Tube Company, The American Bridge Company.

Q. Did not the Carnegie Company do it?

A. They did not, neither the National Steel nor the American Steel Hoop. The American Sheet Steel Company and the American Tin Plate Company also did not make it, but they did not export anything; if they did whatever they exported was a negligible quantity.

Q. Will you prepare and let me have as soon as you can, tomorrow if you can conveniently, if not, as soon as you can, a statement of those companies which did show their exports for the year 1901, and also the statement of those companies for the year 1902, because here they are all aggregated in with the other subsidiaries of the Corporation.

A. For 1902.

Q. You have it here for 1902, but you have the entire out-

put for all the subsidiaries. Now, I want for the year 1901 and the year 1902 the exports of those several companies in respect to which you state these figures for 1901.

A. I think we can furnish that to you.

Q. In so far as you have the exports shown by the Carnegie Company for rails and any other product that it may show. Now is it not a fact, Mr. Filbert, that there were exported by the various companies that were subsidiaries of the United States Steel Corporation in 1901 more than they exported in the year 1902?

A. Are you referring to aggregate tonnage, or by commodities?

Q. Well, put it either way or both ways; I just want to get the fact. If you have the information give me all your information on the subject.

A. I think that in order to properly understand and analyze the export shipments for 1901 with 1902 or any subsequent year there should be used the shipments of the respective kinds of products that went out. I do not think that a comparison of any aggregate figures tells the whole story.

Q. Well, of course it is not a question, you know, of what your opinion is as to what tells the story. The question is what facts you can give us, and then, of course, the Court will judge what kind of a story it tells.

Mr. Reed: Mr. Filbert is just suggesting some facts to you.

By Mr. Dickinson:

Q. I would like to have the facts both ways, if you have them; and I would like to have it the way you put it, and then the way I asked. I would like to have it both ways.

A. You have asked us to prepare a statement of the export shipments since 1901 so far as we were able to get them. That will tell the story when you get it.

Q. I asked you whether or not, so far as you know, the aggregate tonnage in 1901—if I did not put it that way I will put in that way—exceeded the aggregate tonnage in 1902.

A. According to the government statistics, it did.

Q. Coming back to this table, Exhibit 44, Mr. Filbert, take the subject of pig iron in 1902 and the amount exported. I

do not suppose you, from memory, can state the figures in this table for all those years on these various articles.

A. No, sir.

Q. How was this table made up?

A. In the same manner that I have explained to you with respect to the two previous tables which you have examined me on.

MR. DICKINSON: This table and the testimony based thereon is excepted to as secondary and incompetent, and the years 1911 and 1912 are objected to as embracing a period subsequent to the filing of the petition.

By MR. DICKINSON:

Q. Mr. Colton calls my attention to the answer you gave to a question of mine which may not be just commensurate with the question. Probably you intended it to be; I don't know, I doubt if you did not. I asked you whether or not, as a matter of fact, the aggregate tonnage of exports by the subsidiary companies for 1901 was greater than in 1902, and I believe you said the government statistics—what did you say?

A. I stated that the government statistics of exports showed that there had been exported from this country in 1901 a greater aggregate tonnage than was exported in 1902. If you ask the question as to the subsidiary companies——

Q. That does not quite, however, as you see, cover the question.

A. I see.

Q. What would you say now?

A. I cannot answer it; I should have to have the figures first.

Q. You would have to have the figures before you could answer it?

A. I stated I have not all that information complete for all the subsidiary companies.

Q. You are going to try to get that?

A. So far as we can get it.

Q. Referring to Exhibit 45, Mr. Filbert, which shows what was paid to employes: Does that item "Employes" include officers as well?

A. It does.

Q. So that this covers everything, from the highest to the lowest?

A. Yes, sir.

Q. Coming to Exhibit No. 46: That is excepted to because it embraces the year 1911, and goes into a period of comparison which transpired after the filing of the petition in this cause, and is therefore irrelevant and incompetent.

Now, Mr. Filbert, who prepared this table No. 46?

A. I did.

Q. Yourself?

A. Yes, sir.

Q. Take the year 1900; the first item here is "Wire, bright and annealed," and it then gives the selling value and the percentage of total selling value.

MR. REED: Do you want to see this, Mr. Filbert?

THE WITNESS: Yes.

By MR. DICKINSON:

Q. How did you go about preparing this table?

A. As I testified this morning the figures with respect to the commodities listed, the tons and the gross selling value were for the year 1900 drawn from an official return made to us by the American Steel & Wire Company shortly after the first of April, 1901. Of course the figures in the next column, "Per cent. of total selling value," were calculated by me from the figures in the preceding column.

Do you want to know for the year 1911?

Q. No; I had not asked you about that.

A. I beg your pardon.

Q. Coming back to this "wire, bright and annealed" for the year 1900, what kind of returns were those? In what shape were they?

A. It was a statement showing the business done by the American Steel & Wire Company, the shipments made and the selling value for the preceding year, which statement formed a part of a series of statements, one working into the other, and up through the general profit and loss account and into the balance sheet of the company.

Q. But I am speaking now of the original statement. What did that original statement show? Did it show these figures?

A. Certainly.

Q. On that statement?

A. Certainly.

Q. The $5,377,199.88?

A. Certainly; yes, sir.

Q. Was it one statement for the whole year or monthly statements?

A. It was one statement for the whole year, but the export shipments were shown in separate columns on the statement from the domestic shipments; and in this statement I combined the export and the domestic, in order to get the aggregate.

Q. Where are those statements?

A. In my office.

Q. They are in your office?

A. Yes.

Q. Does this statement show the item of "Wire, $6,409,886.95," as one item or is that an aggregate figure of something?

A. With respect to that particular item I would not know how to answer definitely. It may be that in preparing this statement, in order to make the figures for 1900 comparable with the year 1911, I combined two or more of the products shown separately on the statement for 1900, and stated one total here; but in the majority of cases I think these items show specifically on the statement.

Q. You cannot say, without getting that out, whether you combined them or not?

A. I cannot say without referring to the statement.

Q. Take the item "Wire, barbed, 134,166 tons, selling value, $7,942,289.92." Do you know whether that, in the original report for the year 1900 to which you refer, was one item or whether that is an assembly of figures?

A. I would not be surprised but what the statement I have referred to shows galvanized separately from the painted wire. The purpose for which this statement was made was to show the relative quantity of products of generally a sim-

ilar character which was turned out by the American Steel & Wire Company. Barbed wire is a commodity of a similar character. While it may be galvanized, or it may be painted, it is barbed wire, and used for the same general purpose.

Q. Coming down to the subject of standard wire nails, an item of $14,218,511.64, does that appear on that statement as one item?

A. I am positive that appears as a single item.

Q. Take the item of field fence, $2,402,532.43. How is it as to that?

A. That may be in two items, indicating the different kinds, Ellwood or American fence; simply a grade or trade mark of a particular kind of fence.

Q. Did you take the original statement and from that make these figures, or were these figures made by some one and furnished to you?

A. I made them.

Q. You made them yourself?

A. I made them.

Q. Coming to the year 1911, how were those figures gotten and from what sources?

A. Those figures were taken from the records to which I have referred in my previous testimony, which are written up in my office from the monthly returns received from the American Steel & Wire Company.

Q. So, while the figures as to 1900 were taken direct from your report of the American Steel & Wire Company those figures for 1911 were taken from figures in your office which themselves were written up from returns. Now, where did those returns come from?

A. For 1911?

Q. Yes.

A. Well, they came to us from the American Steel & Wire Company in the same way that the returns come from agents, for instance.

Q. Now, were they monthly returns?

A. They were monthly returns.

Q. Did they show these separate items as they are shown here?

A. I think they show in greater detail, but I had to combine them in order to make a statement that was properly comparable with the earlier years.

Q. Then these were also, some of them, combination figures?

A. Yes.

Q. Made up from these monthly returns in your office?

A. Yes.

Q. Or copies of monthly returns?

A. No, not copies of monthly returns, the originals.

Q. Are they themselves in your office?

A. Made up from records written up in my office from the monthly returns.

Q. Did you go back to these monthly returns or simply the records in your office?

A. In making up this statement?

Q. Yes.

A. I only went back to the records in my office, because those records are balanced.

Q. You did not do that work?

A. The balancing and writing up of the record?

Q. I mean to say you did not keep up in your office and make in your office the records there which are based upon monthly returns?

A. I did not write up the records in my office, no, sir; those are made by my clerks.

Q. They are made by your clerks?

A. Yes.

Q. And you only compared this or took that in your office as a basis for this work here?

A. Yes, but I know they were right because I——

Q. That is, you thought they were right?

A. No; I knew they were right.

Mr. Lindabury: You stopped him. He said "because I."

Mr. Dickinson: I didn't know you were here.

Mr. Lindabury: Yes, I am here, and I didn't want you to cut him off in the middle of his "because I."

The Witness: Because these records, like all bookkeeping

and statistical records, are built up on a plan which has a balancing feature, and because these records balance with some other figures.

By Mr. Dickinson:

Q. Well, this exhibit 42 that was first presented by Mr. Farrell was supposed to be on records that balanced, wasn't it?

A. That was a statement of averages which were determined from these records by calculation and by drawing them off. Now, you can build up your accounting and statistical records so that you know they are right by balancing them, but you cannot after balancing them be absolutely certain that a man will go to this record and see a figure of $27.10 and put it down on a statement as $27.10 unless you check it against it.

Q. When did you first find out the errors in Mr. Farrell's Exhibit 42?

A. When did I?

Q. Yes.

A. Well, I found five of them right away, within, I guess, twenty-four hours.

Q. From when?

A. From the time he presented the statement.

Q. The first day he presented it?

A. Yes, and the balance were found upon my personally checking that statement against the record.

Q. Your suspicions were aroused when you found those first five?

A. They told me I would have to testify to the fact that it was right, and I wanted to check it up.

Q. So far as you were concerned, it was a different thing from letting another man swear to it. Will you also give us the exports for the year 1900 of the American Steel & Wire Company?

A. I will.

Q. And the others, so far as you have them?

Mr. Reed: Why don't you ask us for those? We have given you most everything you have asked for.

MR. DICKINSON: I did not think of it until the witness was on the stand. I will modify the request, and ask counsel.

MR. REED: We will be very glad to furnish it if we can find it.

MR. COLTON: It is quite customary in these investigations to ask the witness on the stand to produce them.

MR. REED: There are no rules for these investigations.

MR. COLTON: Oh, yes, there are rules.

MR. DICKINSON: I am perfectly willing, if counsel prefers it that way, to do it without any argument.

By MR. DICKINSON:

Q. Coming to Defendants' Exhibit 68, do you remember what that is?

A. Yes.

Q. You began there with the year 1902?

A. Yes.

MR. DICKINSON: Will counsel be good enough to have furnished for us, if they can, the figures for 1901 corresponding to the figures given here on Exhibit 68 for the year 1902?

THE WITNESS: I can answer that.

MR. DICKINSON: No, let counsel answer first.

MR. REED: If the witness says it is possible to do it, we will be very glad to do it.

THE WITNESS: It is not possible to get it.

MR. REED: I am afraid we will have to decline it if it is impossible.

MR. DICKINSON: How far does counsel think they can give it? Can they give it partially?

THE WITNESS: But to give it partially would not be at all indicative; it would not amount to anything.

MR. REED: We want it more than you do; it is very favorable to us.

MR. DICKINSON: Shall I accept that as a communication from you?

MR. REED: Any way you please.

MR. DICKINSON: So far as you have it, we will be very glad to have it.

THE WITNESS: You cannot get it at all.

By Mr. Dickinson:

Q. This Exhibit 68, who made that up?

A. I did.

Q. When was this made up?

A. Within the last four or five weeks. That is to say, the statement itself was made within the last week, but I compiled the major part of those figures about five weeks ago.

Mr. Dickinson: So much of the exhibit and the testimony based thereon as embraces the year 1912 and the portion of the year 1911 which elapsed after the filing of the petition in this cause is objected to as irrelevant. Mr. Reed, I would like to inquire from your witness what figures he thinks he has for 1901 on this subject.

Mr. Reed: Why don't you ask him for information?

Mr. Dickinson: I thought you objected to that.

Mr. Reed: Ask him to produce the papers, if you want him to produce papers.

By Mr. Dickinson:

Q. Well, Mr. Filbert, what information have you with respect to the figures for 1901, figures corresponding to what is shown here for 1902, gross tons domestic, gross tons export, and percentages, shipments of the United States Steel Corporation?

A. We have not any information whatsoever that would permit or enable anyone to obtain the figures for the year 1901 that would be on a basis comparable with these figures given for the succeeding years.

Q. Have you any figures showing, for any subsidiaries of the United States Steel Corporation for the year 1901, the tonnage of all kinds of products other than iron ore, coal, coke and cement shipped by them to customers, or if you have not such figures in the aggregate have you such figures with respect of any item of product of any of the subsidiaries for 1901?

A. For the last six months of 1901 we have data which would enable us to give the tonnage shipped, but not divided between export and domestic, except for the American Steel

& Wire, and possibly the Illinois Steel and Lorain Steel Companies and the Tube Company.

Q. Will you look it up and give us what you have?

A. But we haven't any data that would enable us to make up a statement on that basis for the year 1901 or any part of the year 1901.

Let me explain that. You see, that statement does not include what are termed inter-company shipments; that is to say, shipments of semi-finished materials between subsidiary companies. Now, the Corporation having been formed on April 1, 1901, no records naturally were made by any of these companies prior to that time showing the shipments of semi finished materials in between the companies, nor was it until July 1, 1901, that we got them onto the basis of separating the inter-company shipments from the shipments to customers.

Q. When did those inter-company shipments begin?

A. They began April 1st, of course.

Q. That was in 1901?

A. Pardon me; there certainly were shipments between these subsidiary companies before April 1, 1901.

Q. But that would be on the basis of sales to any outsider, would it not?

A. Of course it would, but because of the fact that those shipments which I term inter-company were not separated prior to July 1, 1901, in the statistics and records of these companies, it makes it absolutely impossible to make that kind of a statement on a basis that would be comparable for the following years.

Q. How about the year 1900?

A. That is still worse.

Q. How, because there would not be any question of any inter-company shipments there at all?

A. No; but don't you see if you made it with 1900 you would at once be duplicating tonnages; you would have tonnages, let us say, for the National Steel Company shipments to the Tin Plate Company as their shipments, and you would have Tin Plate Company shipments to customers of the Tin Plate in again; you cannot make that statement for the year

1901 or the year 1900 on a basis that will be comparable with the data given in Exhibit 68.

Q. You could give their export statement; that would not be involved there, would it?

A. But I stated that those companies did not segregate their export shipments for 1900 and 1901 except as to some few companies, the Steel & Wire, the Illinois, the Lorain and the Tube.

Q. You mean they only kept it in tonnages?

A. I mean they made no segregation in their statistics or records of shipments for export from their shipments to domestic customers.

Q. Would their books show when they sold abroad?

A. The books would show the customers to whom they invoiced that material, but they would not show the class of material nor the tonnage.

Q. Did you examine those records?

A. No, I have not examined the ledgers.

Q. Then you are speaking of something that really you are just theorizing about?

A. I am not theorizing. I have been informed to that effect by the auditors of these companies both verbally and in writing.

Q. Then you are speaking on hearsay. You have not examined those ledgers yourself?

A. If official communications received in the regular course of business from someone who reports to you is hearsay evidence, then what I am telling you is hearsay evidence. That is the best I can do.

Q. It comes pretty near being hearsay in my judgment.

A. Well, I cannot help it.

Mr. Dickinson: Defendants' Exhibit No. 69 and the testimony thereon, so far as it applies to that portion of the year 1911 which was after the petition was filed in this case, is excepted to as irrelevant and incompetent.

By Mr. Dickinson:

Q. Now, Mr. Filbert, from what sources was this table prepared, No. 69?

A. It is exclusively from the official statistics of the American Iron & Steel Association.

Q. Are these statistics all published?

A. The figures are either all published, or there are published basic figures from which these percentages can be made.

Q. Explain a little more fully what you mean by published basic figures, will you?

A. The statement you have before you, all of the percentages you have before you in the two columns on the right-hand side of that statement.

Q. You mean the extreme?

A. There are four columns.

Q. On the right-hand side, you mean?

A. Yes, on the right-hand side, have been published or have been supplied to us by the American Iron & Steel Association. I think with respect to these items bracketed there the data has been supplied to us. It has also been introduced, I think, by the Government in evidence in this suit.

Q. Are you sure of that?

A. I can refer to the record and tell you.

Q. Of course the record would show.

A. I am quite certain; that information was supplied to us for 1911 by the American Iron & Steel Association; in so far as the figures within the bracket are concerned, the total, as you will see there, 35.1, is the published figure.

Q. This in the brackets?

A. Yes, those within the brackets.

Q. Are published figures?

A. No, sir; 35.1 is a published figure.

Q. What column is that in?

A. The second column.

Q. You mean at the right?

A. Yes.

Q. What were you going on to say?

A. I say that the figure of total for rolled products, 1911, 35.1 per cent., and in the last column to the right 64.9 per cent. are published figures, but the percentages under the general caption of other rolled products, which appear immediately above respectively 35.1 and 64.9 per cent., and are cov-

ered by brackets, are not published figures, but are figures which we have obtained from the Association.

Q. How did you get those?

A. They gave them to us; they gave them to you, and they gave them to us, too.

Q. I am asking how you got them; did you get them yourself or were they sent to you, or did you send there and get them, or how?

A. They were sent.

Q. These figures were sent to you?

A. Yes.

Q. And these figures you, of course, know nothing about, except that they were sent to you by the Iron & Steel Association?

A. That is all; that is for the year 1911. For the year 1910 and previous years they were furnished to the Government and introduced in evidence in this case.

Q. They are not in this exhibit, are they, for the year 1910?

A. They are on one of these exhibits which I introduced here.

Q. I mean this that I am talking about now?

A. No.

Q. So when you refer to what the Government put in that does not appear on this exhibit at all, does it?

A. I do not believe the Government put in anything for 1911.

Mr. Dickinson: We object to so much of this table as is based upon information derived from sources other than within the direct knowledge of the witness, as secondary and incompetent.

Q. Coming, Mr. Filbert, to Exhibit No. 70, "Comparative statement of total tonnages of finished rolled iron and steel products produced in the United States by, respectively, the United States Steel Corporaion and all other manufacturers for the years 1901 and 1911," we except to so much of that paper as embraces the period in the year 1911 elapsing after the filing of the bill in this cause as incompetent and irrelevant.

Did you make up this table also?

A. I did.

Q. State the sources from which you made it up, Mr. Filbert.

A. The figures shown in the columns headed 1901 were obtained from published statistics of the American Iron and Steel Association. The figures included in the columns headed 1911 except those two figures of plates and the seven figures down under the head of "other rolled products" were obtained likewise from published statistics of the American Iron and Steel Association. The exceptions which I have mentioned, namely the two items for plates and the seven items under "other rolled products" were obtained from information furnished to us by the American Iron and Steel Association, which items you will notice, however, aggregate the total figure which was published by the American Iron and Steel Association officially; therefore proving that in the aggregate those figures are right.

Q. I asked not what they proved, but where you got them.

A. I told you.

Q. Did you get those figures that are in brackets and which you describe as seven items under "other rolled products" for the year 1911, and "plates and sheets" the two items for the year 1911, in the same way that you have described getting the items that were likewise designated by brackets on Exhibit 69?

A. I did.

MR. DICKINSON: This table is excepted to, and the testimoney based thereon, as being secondary evidence and incompetent.

Coming now to Exhibit No. 71: That exhibit is excepted to, and the testimony based thereon, so far as it embraces that portion of the year 1911 which transpired after the filing of the petition, as being irrelevant.

By MR. DICKINSON:

Q. Now, Mr. Filbert, please explain to us who made up this table and the sources of it.

A. I made this table, from information obtained from the records of the American Iron & Steel Association.

Q. All published records?

A. No, sir; from the official records on file in the office of that organization.

Q. None of them published?

A. I do not believe they are. I do not know. I never have seen them published.

Q. Did you go there yourself?

A. I did not, but I sent my representative there.

Q. And he examined them?

A. He did.

Q. And reported to you?

A. He did.

Q. And upon that you made this table?

A. I did.

MR. DICKINSON: This is excepted to as incompetent and secondary, not the best evidence.

By MR. DICKINSON:

Q. Mr. Filbert, under the term "black plate, tinning," please say whether or not that article is used for any other purpose than for tin plate or terne plate?

A. It is.

Q. For what other purpose?

A. It is used, as indicated on the statement, for stamping and enameling stock, show card stock, stove pipe stock, tea-tray stock, and miscellaneous purposes where a very thin black plate is used.

Q. Is not the largest part of such black plate for tinning, however, used for tin plate and terne plate?

A. The larger part is used for that purpose.

Q. Can you give us any approximation of the percentage used for that purpose, and the percentage used for all the other purposes?

A. Not without referring to the record of the product of our own black plate mills.

Q. You cannot give it now?

A. I cannot give it offhand.

Q. Coming to Exhibit No. 72: You know what that table is, do you?

A. Yes, sir.

Q. How was this made up?

A. From the published records of the American Iron & Steel Association.

Q. All of these were published?

A. Yes, sir.

Q. And you made it up from those sources?

A. Yes, sir.

MR. DICKINSON: We except to so much of this table, and the testimony based thereon, as embraces that part of the year 1911, which elapsed after the filing of the petition in this cause. We except to the entire table, and the testimony based thereon, on the ground that it is secondary and incompetent.

By MR. DICKINSON:

Q. Mr. Filbert, do these comparative statements which show the total amount of steel ingots include crucible steel?

A. I cannot answer that.

Q. Does the Corporation make crucible steel?

A. It does not.

Q. Does the Corporation make steel castings?

A. It makes some steel castings, yes, sir.

Q. Where?

A. South Chicago, Johnstown; it makes castings at the Edgar Thomson Works, and at Lorain they make castings.

Q. Can you give an approximate estimate of the total tonnage per annum of steel castings made by the Corporation in any one of the years here referred to?

A. You mean including——

Q. Take the year 1901.

A. And included within this tonnage of ingots?

Q. Yes.

A. I can refer to the record and give it to you. I cannot give it out of my own mind.

Q. You cannot give it now?

A. Not out of my own mind.

Q. I would be very glad to have that, and crucible, both.

A. We do not make crucible.

Q. I would be very glad to have that, then.

Please refer to the Iron and Steel Association records and answer whether or not it includes crucible steel.

A. Yes, the figures given in the statements I have prepared do include crucible steel castings and ingots.

MR. REED: Better give the amount now for both of those years.

THE WITNESS: I haven't it for 1901.

MR. REED: It is given there right on the table.

THE WITNESS: For 1911, 97,653 tons; for 1901, 98,513 tons.

MR. COLTON: Will you give the crucible steel production for each of the years 1901 to 1910 inclusive? You have given 1901, so begin with 1902.

THE WITNESS: For 1902, 112,772
For 1903, 102,434.
For 1904, 83,391.
For 1905, 102,233.
For 1906, 127,513.
For 1907, 131,234.
For 1908, 63,631.
For 1909, 107,355.
For 1910, 122,303.

By MR. DICKINSON:

Q. Did you prepare this Exhibit 73?

A. I did.

Q. From what sources was it prepared?

A. From the published records of the Iron and Steel Association, supplemented by direct advices to us of the details by classes of the total tonnage designated as "Total other rolled products," and the division of the estimate of total plates and sheets between the two classes of sheets.

Q. Will you be kind enough to designate—I do not know that your answer may not have done so—but if you did not, please designate what portion is based upon information not published.

A. The figures given both of tonnage and of the Steel Cor-

poration's percentage of the total production shown in plates, 12 gauge and heavier, and plates 13 gauge and thinner; also the figures showing that tonnage and the Corporation's percentage of the total country's production of merchant bars, skelp, hoops, bands and cotton ties, splice bars, rolled forging blooms and rolled forging billets, concrete bars, sheet piling, railroad ties, etc., and nail plate and iron rails.

Q. How did you get that information?

A. It was furnished to us by the American Iron and Steel Association.

Q. That is to say, did they send it here, or did you send someone over there and he reported to you?

A. No, they sent it to us.

Q. Does that exhibit embrace crucible steel?

A. Yes, it does.

MR. DICKINSON: Now, we except to this exhibit and to the testimony based thereon as being incompetent and secondary; and further, we except to so much of it as covers that part of 1911 elapsing after the filing of the petition in this cause, as irrelevant and as secondary and incompetent.

MR. REED: Do you except to so much of it as you have already printed in your own exhibits as incompetent and secondary?

MR. DICKINSON: I cannot remember how much was printed; and you have excepted to that.

MR. REED: I don't think we excepted to it.

MR. COLTON: No; Mr. Severance took a shot at it.

MR. DICKINSON: Yes, I think he did. We cannot afford to let you put ours out on exceptions and keep yours in. If you would waive your exceptions we would ours.

MR. SEVERANCE: Then honors would be easy.

(Whereupon, an adjournment was taken until to-morrow, Tuesday, June 17, 1913, at 10:30 o'clock a. m.)

SEVENTY-EIGHTH DAY.

EMPIRE BUILDING,
71 Broadway, New York City,

Tuesday, June 17, 1913.

Before SPECIAL EXAMINER JOHN ARTHUR BROWN.

Present on behalf of the United States, MR. DICKINSON and MR. COLTON.

Present on behalf of the defendants, MR. LINDABURY, MR. SEVERANCE, MR. BOLLING and MR. REED.

W. J. FILBERT,

the witness under examination at the taking of adjournment, resumed the stand.

CROSS-EXAMINATION (Continued),

By MR. DICKINSON:

Q. Mr. Filbert, referring to Exhibit No. 44, you were asked if you could produce figures showing the exports of the various subsidiaries of the United States Steel Corporation for the year 1900 and the year 1901. Have you made that up?

A. I have here some figures for the year 1901 in such shape as they are, and with the explanation on the statement of the source from which they were obtained. For the year 1900 I have not yet, up to the present time, been able to go through my papers and make any digest of what the figures were; but I feel satisfied that I cannot give them for 1900 in even as satisfactory form as they are given for 1901.

Q. You have not gone through yet, as I understand——

A. Not 1900.

Q. Will you let us see what you have there for 1901?

A. Yes. (Handing paper to counsel.)

Q. This gives the gross tonnage of all foreign shipments, but shows no separation of the different kinds of articles?

A. It does not.

Q. What have you on that?

A. For the 291,168 tons I am able to supply the classes of products which make that up.

Q. Will you please do that? You are going to look for the year 1900, and will you show it to us later, and we can recall you if necessary.

A. Yes.

MR. REED: That is not for the year 1900, Judge.

MR. DICKINSON: No; but I say he is going to look further about the year 1900, and later we will probably have to ask him; and in the meantime he can look this up also and prepare it.

THE WITNESS: Yes.

MR. DICKINSON: We offer in evidence this paper presented by Mr. Filbert.

(The paper referred to was thereupon marked "Government Exhibit (Filbert) No 433, June 17, 1913," and will be found in the volume of exhibits.)

By MR. DICKINSON:

Q. Have you had time to examine and see whether or not you can give the details of shipments called for in respect of defendants' exhibit No. 46, that is, in regard to the American Steel & Wire Company?

MR. REED: You did not ask for that, Judge.

THE WITNESS: I do not recall having been asked to obtain anything in regard to that.

MR. DICKINSON: I thought we did ask you that.

THE WITNESS: If you did I have overlooked it. I did not catch it.

MR. REED: I have no recollection of your asking that. What was it you wanted about that?

MR. COLTON: 1900 and 1901. It would be just the same thing as it was in reference to the other paper.

MR. REED: But this statement, Exhibit 46, goes back to the year 1900.

MR. COLTON: But for exports.

MR. DICKINSON: You see this gives the total shipments of

the American Steel & Wire Company, and I thought we called for a statement of the exports by the American Steel & Wire Company.

MR. REED: You want a separation of those into domestic and export shipments?

MR. DICKINSON: Yes.

MR. REED: Can you get such a statement, Mr. Filbert?

THE WITNESS: Yes; but I do not recall its being asked for yesterday. I may be mistaken.

MR. DICKINSON: I may be mistaken, but I was under the impression we had asked for it. It is not of any consequence. We will do so now.

By MR. DICKINSON:

Q. Judge Gary testified that it was "not uncommon for manufacturers in their actual sales to vary from the prices published in the Iron Age and Trade journals; not by our own people, so far as I know; it is not usual for our people to do that." Now, I will ask you whether or not that is your understanding of the fact also, leaving out of consideration, however, the long term exclusive preferential contracts, if any, whereby large purchasers like the American Can Company and the Standard Oil Company are given a discount for an agreement to purchase their entire requirements in certain lines from the United States Steel Corporation.

MR. REED: What volume are you reading from?

MR. DICKINSON: I am reading from my own notes. The first part was from Volume 68, 9118 of the typewritten record.

JUDGE GARY: That is not correctly quoting my testimony, Judge Dickinson.

MR. DICKINSON: I have quoted it literally.

JUDGE GARY: But you should take it in connection with other testimony.

MR. DICKINSON: I object to Judge Gary's stating in the middle of my cross-examination of Mr. Filbert that the question does not represent his testimony, stated in the presence of the witness.

(The question was repeated by the stenographer.)

MR. REED: I object to that first because it is not a fair statement of the testimony of Judge Gary, appearing on pages 9118, 9119, 9120 and 9121 of the typewritten record. I object to it further as an improper method of cross-examination.

I want to call to the attention of the examiner and the witness the testimony of Judge Gary, particularly on pages 9120 and 9121.

MR. DICKINSON: Mr. Filbert, I will read you——

MR. REED: I think that is only fair, to read that to Mr. Filbert.

MR. DICKINSON: That is what I am going to do.

By MR. DICKINSON:

Q. I will read the part designated. I will begin at the top of page 9118. (Reading):

"Mr. Lindabury: No; I am assuming he is familiar with them, however.

"The Witness: I know that it is not uncommon for manufacturers in their actual sales to vary from the prices published in the Iron Age and trade journals; not by our own people, so far as I know; it is not usual for our people to do that.

"By MR. LINDABURY:

"Q. But do you know whether your competitors generally sell at the prices quoted in the trade papers?

"A. Some of them do and some of them do as they please. I did not mean to say and I do not want to be understood as saying that it has been our invariable practice in all cases to adhere to a published price. There have been cases where we have sold in large quantities and varied from the published price, I am pretty sure. I do not know that I have been connected with the contracts, but I know one or two instances where I think our people have made contracts for large tonnages which were different from the published price, but that is what we would do under any other similar circumstances. In other words, it is selling at wholesale instead of retail, like any man in business, in a wholesale business; I won't say any man, but it is not uncommon in many lines of business

and many kinds of work for one doing business by the wholesale to charge a less price than if he he were selling at retail.

"Q. Judge Gary, some tables of price quotations from the Iron Age have been put in, relating to other steel products than rails, and showing at times an unchanging price for months and in one or more instances for a year or more. I do not know whether your attention has been called to those tables or the charts made up from them or not.

"A. It has not.

"Q. Was the evenness of the prices of other products than rails that obtained at times due to agreements fixing the prices?

"A. During what period?

"Q. Since 1904?

"A. No. An even price may be maintained for various reasons, I should say. Of course if prices are very low, so low that no one can afford to sell any cheaper, it is easy to maintain those prices; but the conditions may be such, business may be so good, and the demand so great, that there is no motive for changing prices, and they are allowed to be kept down because everyone considers them fair; or the product may be in the hands of the few people who are kept well informed as to what the others are doing all the time, and the prices are maintained because of that information, and therefore there is no particular motive, and what often happens is that there is a published price continuing for a long time unless sellers are publishing one price and really doing what they please. That is, I mean by that they are selling at such prices as they choose to sell for regardless of the published price, I mean without regard to that."

MR. READ: Won't you read that part of Judge Gary's testimony on cross examination in which he stated that by published prices he did not mean the prices published in a particular trade journal.

MR. DICKINSON: I do not think I should on cross examination now. I have gone over these books——

MR. REED: Let me finish—That part of his cross examination in which he said that by "published prices" he did not

mean in his answer necessarily the prices published in trade journals, but the prices published by the Steel Corporation. I do not think it is proper cross examination of Mr. Filbert to read sections or quotations from other people's testimony.

MR. DICKINSON: It has been the custom of the other side in their examinations to state what testimony has been given by other witnesses.

MR. REED: I do not recall having done that.

MR. DICKINSON: You have not, but it has been done repeatedly.

MR. REED: But I think, if you are going to read from Judge Gary's testimony as a method of cross examination of Mr. Filbert, you should quote all that he has said on that point.

Q. I will ask, Mr. Filbert, this question: whether or not it was the custom of the United States Steel Corporation to sell at prices published in the Iron Age and trade journals except in the matters involved in special long term contracts which were exclusive or preferential, whereby large purchasers like the American Can Company and the Standard Oil Company were given a discount in return for an agreement to purchase their entire lines in certain requirements from the United States Steel Corporation.

MR. REED: I object to this as an improper method of cross examination, and not as cross examination at all.

THE WITNESS: Answering your question literally, I do not believe that I am qualified to answer it. I am not in the selling department, nor do I have charge of sales, nor does this prejudice what I said yesterday concerning sales, if you will read the testimony.

By MR. DICKINSON:

Q. How far are you qualified to speak in regard to sales?

A. I am qualified to speak within the limits covered by my testimony yesterday and at this particular issue.

Q. If you are not in the selling department, upon what is your information based in regard to prices?

A. Now, I did not testify yesterday with respect to specific prices. I testified with reference to average prices obtaining

over a period of time as taken from the trade journals, and the average price received during similar periods for all products sold within those periods.

Q. What periods now did you embrace?

A. Any period that you may wish to take; any period of reasonable length of time. Of course not one week.

Q. You mean a year?

A. Yes, I would say a year.

Q. Does your knowledge embrace all of the years since the formation of the United States Steel Corporation down to the time that this suit was brought?

A. Generally speaking, yes.

Q. Can you state the average prices, leaving out standard Bessemer rails and the special products sold by the subsidiaries of the United States Steel Corporation for the several years from April, 1901, down to the time this suit was brought?

A. Will you please be explicit as to what you mean by "average prices?" Do you mean the average prices at which tonnage booked during a certain period was taken or average prices received for shipments made during a certain period?

Q. Well, can you give either?

A. I have given the latter in the statements which have been submitted in the testimony for the years 1904 to 1912, inclusive.

MR. DICKINSON: What exhibit is that?

MR. REED: Exhibit 42.

MR. DICKINSON: That is your Exhibit 67?

MR. REED: Yes.

By MR. DICKINSON:

Q. What part did you have in the preparation of this?

A. Do you want me to go over that again? I will be glad to do so if you want me to.

Q. We will save a little bit of time if you will answer my questions. I will economize your time and mine, too.

MR. REED: That was a proper answer. Mr. Filbert went into that at great length yesterday.

THE WITNESS: I verified the accuracy of the figures on that statement against the summaries and records prepared in my

department from reports and returns received monthly from the subsidiary companies showing the shipments which they made of the respective classes of products in each month, together with the gross selling prices which they received for the products in each of those months.

Q. What account does that take, if any, of the effect upon average prices of any long term contracts, where preferences were given?

A. The tonnage shipped under those contracts is included in and forms a part of the general average for the product for which the price is given.

Q. Were the prices that were paid throughout the period of those contracts and for the several years for which they were paid taken into account in getting the average prices shown on this table?

A. They were.

Q. Did you examine those contracts yourself?

A. I have at times seen some of those contracts, but I would not testify that I made an examination of them.

Q. Well, did you go into those contracts and analyze them and get the amount paid each year under each one of those contracts with a view of determining how far they affected the averages here?

A. No, I have not.

Q. Now, the trade paper prices show what are called base prices or prices for standard articles, do they not?

A. With respect to certain commodities; yes, sir.

Q. These show the prices of all commodities sold, do they not?

A. That is true; yes, sir. That is all gross of any particular class.

Q. Therefore these prices would not be comparable with the prices at which merely standard or base articles sold, would they?

A. Not exactly, no, sir.

Q. Mr. Filbert, I call your attention to Defendants' Exhibit No. 76; that was the exhibit in regard to pipe manufacturers.

A. Yes, sir.

Q. If you want to look at it——

A. No, I know what it is.

Q. You know what it is?

A. Yes.

Q. You show there for the year 1899 the number of furnaces for the various companies listed in this exhibit. When you speak of furnaces here, what kind of furnaces do you include?

A. Pipe furnaces.

Q. Are those what they call heating furnaces?

A. Heating furnaces; pipe furnaces.

Q. And the furnaces from which the pipe was made as the sole product?

A. Yes, from which the skelp was taken to make into pipe.

MR. REED: It does not include open hearth furnaces at all?

MR. DICKINSON: I understand; I supposed that was true.

By MR. DICKINSON:

Q. Who made up that statement?

A. I prepared that statement.

Q. From what original sources did you prepare it?

A. It was prepared from reports turned in to me in the regular order of business by the National Tube Company.

Q. Were they monthly reports or yearly reports, or for what period were they rendered?

A. They were made periodically—I do not know as I should use that word—but they were not monthly reports.

Q. And the original reports came to your office?

A. They were typewritten reports. I do not recall, now, whether the copies I had were the originals or the carbon typewritten copies.

Q. You have those reports, have you?

A. Yes, sir.

Q. For each of these years presented here the basis was these reports to which you refer?

A. Yes, sir.

Q. Did you tabulate them yourself?

A. I condensed them and tabulated them into this statement.

Q. You did that work yourself?

A. Yes, sir.

Q. You are referring, now, to that part of your report, I suppose, that deals with the product of the National Tube, in those answers?

A. I do not quite understand the question.

Q. My question was general, but I presume that in those answers, so far as the reports are concerned, you were dealing with concerns controlled by the National Tube?

A. The National Tube?

Q. Yes.

A. The National Tube, the tube companies——

Q. Because there are some others here—independents; they made no reports to you?

A. Oh, no; but the reports made to me by the National Tube comprehended and showed both the data as to their own furnaces and capacities——

Q. (Interposing) And independents also?

A. Yes, sir.

Q. In taking into account, or rather in estimating this, did you just take the number of furnaces without knowing whether or not at the particular time for any particular year, they were being operated, or whether they were capable of being operated?

A. I took the information that was reported to me by the National Tube people, and my understanding was that they took into consideration what are termed active producing units.

MR. DICKINSON: We ask counsel to produce the original reports upon which the estimates for 1899 were made.

MR. REED: We will make search for them, Judge.

MR. DICKINSON: He says he has them.

THE WITNESS: I think I have them.

By MR. DICKINSON:

Q. Were these reports made to your office over the period which they embrace, or how did you get them?

A. They were furnished to me by the National Tube people on request, I think, from me.

Q. When?

A. Several years ago the first ones were furnished. The one for 1912 there was naturally furnished within a year; must have been furnished within a year.

Q. Those for 1899 and 1901 were furnished, you say, several years ago?

A. I am quite certain they were. I know I have had that information for a long period of time.

Q. These were just papers turned over to you by the National Tube; they were not papers that came to your office as reports in the regular course of business?

A. I think I should say in the regular course of business. I believe that any request I make to a subsidiary company for information and data, whether it be specific or general, comes to me in the regular course of business.

Q. What I mean by that is that these did not come to your office periodically and from time to time for the several periods separately, in the course of business?

A. No, they did not.

Q. But they were papers that were in the possession of the National Tube, and while you called for them officially, and they were furnished to you in that way, they did not reach your office as reports in the regular routine of business from time to time. Is that a correct statement? If not, just state how it is.

A. I think they reached my office in the regular routine of business.

Q. I understand, of course, that you called for them officially.

A. That is correct.

Q. And they sent them officially?

A. That is correct.

Q. If you had not called for them they would not have come to you at all?

A. That is correct.

Q. But so far as the regular filing and regular report is

concerned, they went to the National Tube; I mean, as periodical reports?

A. The National Tube made them. They did not go to the National Tube, Judge.

Q. But it had a lot of separate concerns, did it not? It was made by them, was it?

A. It was made up by the officials of the National Tube Company from their knowledge of the business. In respect of their own plants it was made from their personal knowledge of what property they had and what producing capacity they had, and their records that showed this. In respect of the units and the capacity of all other manufacturers, it was made up by them from their knowledge of the properties.

Q. Take the year 1899. When was that made up by the National Tube?

A. I could not answer that definitely.

Q. The originals which you have will show that?

A. It might or it might not. What they sent me might have been made up at the time they sent it to me, may have been a transcript from their record which was made before. I cannot answer that.

Q. Do you know who made it up?

A. What official?

Q. Yes.

A. I cannot answer that.

Q. Do you know what sources they had for making up for the year 1899 and for the year 1901 the number of furnaces and the estimated capacity of the furnaces attributed in this paper to others than concerns operated by the National Tube?

A. I understand they made it up from the personal knowledge of their officials or some of their officials, of what plants other pipe makers possessed, how many pipe furnaces they had, what the size of those furnaces was, and the estimate of the capacity of those furnaces; and they may have obtained information from trade records, for aught I know.

Q. And you do not know how that is?

A. Not further than I have stated.

MR. REED: Judge, I have found that testimony of Judge

Gary that I referred to, in his cross examination by you on this matter of publishing prices, and I think it should fairly go into the record——

MR. DICKINSON: I think you can put it in on re-direct examination.

MR. REED: Pardon me, Judge; I will finish my sentence first, and then I shall be glad to hear your suggestion. As I started to say, I think it should fairly go into the record now, as soon as we have found it, because it necessarily qualifies the question you put to Mr. Filbert.

MR. DICKINSON: We will not have any trouble about it. If you insist on putting it in, I will object to it as an improper interruption in the course of the cross examination.

MR. REED: All right. I should like to put it into Mr. Filbert's cross examination, because I think it necessarily forms a part of the question you put to him.

MR. DICKINSON: You insist on putting it in now over my objection?

MR. REED: Yes. I do not mean to be discourteous, Judge; but I merely put it in over your formal objection.

MR. DICKINSON: Oh, I understand. We are not going to get angry about it.

MR. REED: From page 10172 of the typewritten record:

"Q. You have spoken of the matters of publicity, and the way in which you took the public into your confidence through newspapers and otherwise. I will ask you whether or not it was your custom to give to the trade journals announcements of prices at which you were going to sell?

"A. No.

"Q. Did you do it at times?

"A. No; I do not remember to have ever given any prices to any of the trade journals at any time. The United States Steel Corporation has not been in the habit of publishing prices, publishing price lists; I do not think the subsidiary companies have, certainly not many, if any of them, but prices have been what I call published by information given more or less to trade journals and others, and more freely by our selling companies to the trade by way of circular letters."

MR. DICKINSON: Now I will proceed, having been inter-

rupted, and object to Exhibit 76 and the testimony based thereon, upon the ground that it is based upon hearsay evidence and is secondary, and from sources not within the knowledge of the witness who has testified thereto. I also object to 1912, because it is a period that transpired after the filing of the petition in this cause, as irrelevant.

By Mr. Dickinson:

Q. Have you sent for those papers?

A. Do you want them produced?

Mr. Dickinson: Yes.

Mr. Reed: Judge Dickinson, that is not cross examination.

Mr. Dickinson: I submit, Mr. Reed, that here is a witness who says he has these papers, has them in his control, and if you want to produce them later I can come back to the subject, if you prefer it that way.

Mr. Reed: I think that will be very much better.

Mr. Dickinson: Very well; I want to be agreeable about it. I do not care especially whether we take it up now or later.

By Mr. Dickinson:

Q. Were not the estimates given in Defendants' Exhibit 71, so far as they relate to welded pipe and tubes, based upon Defendants' Exhibit 76?

A. They were, or upon the same supporting data from which Exhibit 76 was made.

Mr. Dickinson: We object to Defendants' Exhibit 71 in so far as it relates to welded pipe and tubes, upon the same grounds as those upon which we have objected to defendants' Exhibit 76. We also object to Defendants' Exhibit 71, in so far as it relates to seamless tubes, because it shows on its face that it was based upon estimates. We also object to Defendants' Exhibit 71 in so far as it relates to welded pipe and seamless tube, because it shows on its face that it is based upon mere estimates. We also object to Defendants' Exhibit 71 in so far as it relates to tubes, because it is based upon estimated normal annual productive capacity, because it is not shown what is meant by normal annual productive capacity.

MR. REED: Where is that, normal annual productive capacity?

MR. DICKINSON: That is along about the middle, based upon "normal annual productive capacity, there being no statistics available showing the annual production of manufacturers other than the Steel Corporation."

By MR. DICKINSON:

Q. Now, as to this portion of Exhibit 71 referring to seamless tubes, what source of information did you have for preparing that?

A. The same supporting data as that used in the case of the statement concerning welded tubes.

Q. And as brought out in reference to Exhibit 76?

A. Yes.

MR. DICKINSON: That is expected to on the same grounds.

Q. Now, will you produce this also at the same time you produce the others?

THE WITNESS: Yes.

By MR. DICKINSON:

Q. What amount of standard T-rails was produced by the Tennessee Coal, Iron & Railroad Company in 1908, 1909 and 1910? If you haven't the figures there you can get them.

A. No, I think I can give that approximately, but I would rather refer to the records.

Q. You will do that?

A. If you wish it.

Q. Can you do it now or later?

A. I will have to go down to my office to get it.

Q. Then you will get that later. This exhibit 77 shows the production by the Tennessee Coal, Iron & Railroad Company in 1907. Now, what proportion of this set down here as produced in 1907 was made upon mills that were completed before the purchase of the Tennessee Coal, Iron & Railroad Company by the United States Steel Corporation, and what proportion was made by mills that were in process of construction and were completed afterwards?

A. To give exact or reasonably exact percentages I would

have to refer to the records to ascertain what part of that production was made before November 1st, 1907, and what proportion after November 1st, 1907.

Q. As a matter of fact, they were operating when the United States Steel Corporation took over the Tennessee Coal, Iron & Railroad Company, mills for making rails, and afterwards there were operated mills which were in process of building at the time the Corporation took that over. Is not that so?

A. They were operating and rolling steel prior to the time the Steel Corporation took over the property, and at the time they took it over they were rebuilding and remodeling their steel works, that is, their open-hearth steel works, and had been remodeling them and subsequently did remodel the rail mill, as I recall.

MR. REED: You did not get Judge Dickinson's question at all. He asked you what part of that tonnage was rolled on mills put in operation after November 1st, 1907, and before January 1st, 1908.

THE WITNESS: No, he did not ask that.

MR. REED: That is what it meant, if it meant anything.

(By request the stenographer repeated the last question and answer of the witness.)

Q. Mr. Filbert, do you know what portion of the rails furnished the Harriman Lines were made upon the mills that were in operation by the Tennessee Coal, Iron & Railroad Company when taken over by the United States Steel Corporation and what proportion, if any, were made upon the mills that were completed at or about the time the Corporation took it over?

A. I know that rails were furnished to the Harriman Lines after the Steel Corporation took over the company, but whether they were rolled on the rail mill as it existed as of November 1, 1907, or on the remodeled mill I cannot say.

Q. Now, out of this order of 157,000 tons made for the Harriman Lines, do you know whether any of that was furnished by the Tennessee Coal, Iron & Railroad Company before it was taken over by the United States Steel Corporation?

A. My recollection is that some tonnage was furnished.

Q. Those mills were very inferior, were they not, to the mills that were being built or being remodeled?

A. They were inferior to the mills that were built afterwards.

Q. Within what time were those that you refer to built?

A. I would not like to testify positively, but my impression is that the rail mill was remodeled along in May or June, 1908; that may be an error.

Q. That was a remodeled mill?

A. Well, a rebuilt mill.

Q. Was not the Tennessee Coal, Iron & Railroad Company rebuilding a mill that was to be finished along in November, 1907, about November, 1907, when it was taken over by the United States Steel Corporation?

A. My recollection is that they were not at November 1, 1907, rebuilding or remodeling their rail mills.

Q. I will read you from the Directory of the Iron and Steel Works, 1908, page 198, as follows, under the head "Tennessee Coal, Iron & Railroad Company:

"Steel Works Division, Ensley, Alabama. Built in 1898-9; first heat poured November 30, 1899; eleven 50-gross-ton basic open-hearth furnaces (10 tilting and one stationary) with an annual capacity of 350,000 tons of ingots; one coal reheating furnace, five 4-hole soaking pits, and one 44-inch blooming mill; product, blooms, billets and slabs; also one 27-inch rail train with one 2-high 34-inch roughing mill; rail mill now being rebuilt and will probably be ready for operation in November, 1907."

Now, isn't a fact that they were then rebuilding a rail mill which was ready for operation some time in 1907?

Mr. Reed: What is the date of that publication?

Mr. Dickinson: 1908, for 1907.

Mr. Reed: It is supposed to speak as of the first of 1908, is it, the first of January?

Mr. Dickinson: It is entitled "Directory of the Iron and Steel Works of the United States, compiled and published by the American Iron and Steel Association, corrected to March 1, 1908."

MR. REED: I object to that as an improper method of cross examining the witness.

By MR. DICKINSON:

Q. How do you answer the question?

A. I am positive that the Tennessee Coal, Iron & Railroad Company was not remodeling their rail mill at November 1st, 1907, and according to my best recollection the remodeling took place in the early summer of 1908.

Q. If that is true, then the total production shown upon your Exhibit 77 for the year 1907 was made upon their old mills, wasn't it?

A. That would have been the case.

Q. Mr. Filbert, I will ask you if the records of the Tennessee Coal, Iron & Railroad Company do not show that in November, 1907, they were remodeling and rebuilding this rail mill?

A. I stated that I was positive they were not remodeling and rebuilding that rail mill in November, 1907.

Q. And had not done any work on it previous to that time in the way of remodeling?

A. Of course, if you will allow me, there is not a steel works in the United States that there is not some work going on 90 per cent. of the time in making small improvements of some kind, or miscellaneous improvements.

Q. I do not refer to that; I refer to fundamental changes, absolutely remodeling for the purpose of lowering cost and producing higher efficiency of production.

A. I cannot answer as to when next prior to November 1st, 1907, the Tennessee Company made a thorough fundamental remodeling of their rail mill.

Q. Have you got any statement, or do your records show what work was being done at the Tennessee Coal, Iron & Railroad Company respecting the rail mill when those properties were taken over by the United States Steel Corporation or prior thereto, during that year.

A. We have the regular reports of that company, and I think they show information on those lines.

MR. DICKINSON: We would like to have that report, Mr. Reed.

MR. REED: We will try to get it for you, Judge. That question asks for work being done on rail mills. Do you mean production?

MR. DICKINSON: I mean remodeling work, not mere repair work.

By MR. DICKINSON:

Q. Referring to Defendants' Exhibit 78, what are the sources, Mr. Filbert, from which this table was prepared?

A. With respect to the figures as of January 1st, 1900, the data was furnished to me upon request.

Q. From whom?

A. From the auditors of the subsidiary companies.

Q. When was that done?

A. That was done recently. With respect to the data as of all the other dates it was compiled from returns that were made to us currently, sometimes annually, sometimes semi-annually, at various times during this period, and was also verified recently with respect to the years prior to 1906.

Q. What part did you have in this preparation and what sources of information came immediately under the scope of your work?

A. The statement was prepared, so far as the burden of the work was concerned, that is, the actual putting down, by my assistant. I then verified the accuracy of his figures from the records and data from which he made them up.

Q. Those data that had been sent to you from these other offices?

A. Yes, sir.

Q. How were they made up? Do you know?

A. They were made up from the personal knowledge of the officials of those companies. There is no auditor of a subsidiary company that does not know how many open-hearth furnaces he had at each of their plants.

Q. And your knowledge is based upon statements made by them.

A. Not entirely.

Q. I am trying to get at just what it is based upon.

A. I myself know how many furnaces many of these companies had.

Q. Do you know of your own knowledge, independent of that information furnished you, the number of open-hearth furnaces that the Carnegie had for the year 1900?

A. No; I stated, if you please, that that was furnished to me.

Q. Did you know, independently of those figures that were furnished you, the number of open-hearth furnaces for any of these subsidiaries or all of them for the various years sent in?

A. I know it from records that come to my office, both the regular returns setting forth the various units which these companies have, and their capacity, and also from various other records which are available to me. They are records that come in from month to month, the moneys that are expended for constructing new plants from appropriations and authorizations that go through from time to time, that indicate what they have got and what additional they want to make, from various sources.

Q. That is the kind of personal knowledge that you have?

A. Yes, sir; and, in addition, I have seen a good many of these plants.

Q. How many of these plants have you seen?

A. I have seen the plant at South Chicago, the plant at Gary, and at Lorain, and at Homestead, at Donora, and at South Sharon and the Tennessee——

MR. REED: And at McKeesport?

THE WITNESS: They have not got any open-hearth furnaces at McKeesport.

By MR. DICKINSON:

Q. For each of these various years did you see them?

A. No, I have not visited them every year; but when I visited Clairton, for example, they had at that time twelve furnaces, and now they have got fourteen. I know they have built two since.

Q. That is in the year 1913, is it not?

A. No, 1912. They were built last year.

Q. It is put down here for the year 1913.

A. It is put down there as of January 1, 1913; and that is correct.

Q. Were any of the furnaces idle or obsolete at any of these times?

A. None were obsolete, but you will always find one or more idle furnaces at open-hearth furnace plants, because the nature of the business is such that you are always rebuilding or repairing some one or more of those furnaces.

Q. Do you know whether or not any of these furnaces were abandoned furnaces, furnaces that were not operating?

A. I know that none are abandoned furnaces.

Q. You know that none were for any of these years?

A. I know that none were abandoned. Pardon me; there were two furnaces, small furnaces, up at the Clark mill of the American Steel Hoop Company which, in the early years of the Corporation, made steel, but were razed and abandoned.

They were little bits of things, and there were also some furnaces at the Muncie or Midland plant of the American Sheet Steel Company, which were abandoned because of the exhaustion of natural gas in that field for heating purposes, and it was impossible to run them, or unprofitable to run them.

Mr. Dickinson: So much of Exhibit No. 78 as refers to the years 1912 and 1913 is excepted to as irrelevant, and so much as refers to that portion of the year 1911 transpiring after the filing of the petition in this cause is excepted to as irrelevant; and the entire exhibit and the testimony thereon is excepted to as being based upon hearsay evidence and secondary.

Mr. Reed: Hearsay, although he says he knows it?

By Mr. Dickinson:

Q. Mr. Filbert, coming now to Exhibit No. 79. Did you say that you prepared this exhibit?

A. I prepared that in conjunction with my assistant. He actually put down the figures. I called them off. I observed them when he put them down, and checked them afterward and also checked the percentages.

Q. What did he put them down from?

A. From the published records of the American Iron & Steel Association.

Q. Was that the only source of information upon which this was based?

A. It is the only source available in the world from which you can get that information.

Q. I am just asking you if it was the one and the only one which you availed yourself of at that time?

A. Yes.

MR. DICKINSON: This is objected to so far as it embraces the year 1912 and that portion of the year 1911 expiring after the filing of the petition in this cause, as irrelevant. The whole exhibit and the testimony thereon is excepted to as hearsay and secondary evidence.

Q. I will read to you from the first annual report of the United States Steel Corporation for the fiscal year ending December 31, 1902, as follows, page 19, under the head of "Union-Sharon purchase."

"The property acquired through the capital stock of the Union Steel Company, completed and under construction, is as follows: Manufacturing plants at Donora and Sharon, 5 blast furnaces, 24 open-hearth furnaces, 2 blooming, slabbing and sheet bar mills, 4 rod mills, 2 wire and nails mills, 1 skelp works, 1 tube works, 1 plate mill, 1 tin plate plant, 1 sheet plant, by-product coke plant, 212 ovens."

I ask you whether or not that statement is correct.

A. May I look at the report, please?

Q. Yes (handing report to witness).

A. That is substantially correct in respect of the producing units then in operation and then under construction.

MR. REED: The report says "under construction."

MR. DICKINSON: I read "completed and under construction."

THE WITNESS: I wanted to emphasize "under construction," because there were quite a number of those units that were not completed and available for operation for upwards of a year and nearly two years subsequent to that date, and moreover, I think there is a duplication there. It says "1 skelp mill" and "1 plate mill." My recollection is that there is only one mill there, which is a combination plate and skelp mill.

By Mr. Dickinson:

Q. With that exception, so far as your memory serves you as to whether or not that is an error, state whether or not the statement here is correct.

A. Yes.

Q. Now, I will call your attention to and will read to you from the "Iron and Steel Works of the United States, 1904," under the heading of "Union Steel Company," page 21, as follows:

"Blast Furnaces—4 Completed and 1 Building.

"Donora Furnaces, Donora, Washington county, Pa. (To be operated by the Carnegie Steel Company of New Jersey.) Two stacks, Nos. 1 and 2, each 85x22, built in 1902-4; not blown in down to April 30, 1904; four Kennedy stoves, each 100x24; fuel, Connellsville coke; ore, Lake Superior; product, basic open-hearth pig iron; estimated total annual capacity, 365,000 tons. Equipped with two Heyl & Patterson pig-iron casting machines. (The furnaces were partly built by the Union Steel Company and were completed by the Carnegie Steel Company of New Jersey.)"

Is that statement correct?

Mr. Reed: Objected to as improper cross-examination.

The Witness: It is not entirely correct.

By Mr. Dickinson:

Q. In what respect, then, is it not correct?

A. May I see the statement?

Q. Yes; it begins where I have that circle, and goes down to the first paragraph.

A. Well, this, first of all, states "four furnaces completed and one building." It does not indicate as of what date those were completed. Now, all of the furnaces of the Union Steel Company were completed during 1904, but one was not completed until in October and the others in the early part of the year. Therefore, if that statement implies that it had four completed furnaces the first of January, 1904, it is not correct.

Q. In other respects is it correct, that statement?

A. I cannot answer as to whether they have Kennedy stoves there or whether they have Heyl & Patterson pig-casting machines. The statement that the furnaces were partly built by the Union Steel Company and completed by the Carnegie Steel Company is not correct.

Q. I did not read that to you.

MR. REED: Yes, you did, Judge.

THE WITNESS: You did, and I turned over and read. That is not correct. They were completed by the Union Steel Company.

By MR. DICKINSON:

Q. How much of it was completed by the Union Steel Company?

A. All of them.

Q. Those are the only corrections?

A. In the first section.

Q. I continue: (Reading)

"South Sharon Furnaces, Sharon, Pa. (Operated by the Carnegie Steel Company of New Jersey.) Three stacks, two completed, and one building: No. 1 (completed), 100x22, built in 1900-1, and blown in in September, 1901; No. 2 (completed) and No. 3 (building), each 85x19, built in 1902-4; No. 2 not blown in down to April 30, 1904; No. 3 to be blown in later: No. 1 has four Cowper-Kennedy stoves, each 100x22, and Nos. 2 and 3 have each four Cowper-Kennedy stoves, each 90x21. Fuel, coke; ore, Lake Superior; product, basic pig iron; total annual capacity of the completed furnaces, 320,000 tons; of the building furnace, 120,000 tons; total, 440,000 tons. Equipped with two single strand Heyl & Patterson pig iron casting machines. (Furnace No. 1 was built and formerly operated by the Sharon Steel Company; it was also operated later by the National Steel Company.) Furnaces Nos. 2 and 3 were partly built by the Sharon Steel Company and the National Steel Company; No. 2 was completed and No. 3 is being completed by the Carnegie Steel Company (of New Jersey).

"Total annual capacity of the 4 completed furnaces, 685,000 gross tons; of the building furnace, 120,000 tons; total, 805,000 tons."

A. In the first place, the whole statement——

MR. REED: Wait a minute. Objected to as an improper method of cross-examination, because it has not been shown that the witness has made or has ever seen the memorandum which has been read to him.

MR. DICKINSON: I am asking him what he knows.

MR. REED: I object to that method of asking.

THE WITNESS: I should say, Judge Dickinson, that that statement is a mixture of partially correct statements and partially incorrect statements, and of other things that I do not know anything about.

By MR. DICKINSON:

Q. State those that are incorrect and those that you do not know anything about, and that will leave those that are correct.

A. The statement that at South Sharon there were in 1904 three stacks, two completed and one building, is correct.

MR. REED: Are you stating what is correct or what is incorrect?

THE WITNESS: I am stating what is correct. I do not know the size of those stacks or the type of stoves or the type of pig iron casting machines which they had; I do not know whether that statement is correct or not. The statement that No. 2 furnace was completed is correct if it refers to a date of May 1, 1904. If it refers to an earlier date it is incorrect. The statement that No. 3 was building in 1904 is correct. I know that those furnaces did use and were designed to use coke made from Connellsville coal; iron, from Lake Superior ores. The total capacity of the three furnaces is given at 440,000 tons. That is not correct; it over-states it by 40,000 tons. The capacity of those furnaces was 400,000 tons. The statement reading "Furnace No. 1 was built and formerly operated by the Sharon Steel Company" is correct. Then following that, after the semi-colon, "It was also operated later by the National Steel Company," is not correct. Then it states "Stacks Nos. 2 and 3 were partly built by the Sharon Steel Company and the National Steel Company; No. 2 was completed and No. 3 is being built by the Carnegie

Steel Company of New Jersey," that entire sentence is incorrect.

By Mr. Dickinson:

Q. It says "completed."

A. I know; it is incorrect except as to the statement that they were partly built by the Sharon Steel Company. That part is correct, and all the rest of the reference to the National Steel Company and the Carnegie Steel Company is incorrect.

Q. You say that No. 3 was not being completed by the Carnegie Steel Company?

A. I say it was not being completed by the Carnegie Steel Company, but by the Union.

Q. Come down to the total annual capacity of the four completed furnaces.

A. There are only three furnaces at South Sharon; there never have been but three furnaces at South Sharon.

Mr. Reed: Do you think it saves time to ask the question that way?

Mr. Dickinson: You mean instead of putting it the other way?

Mr. Reed: By putting a long record before him and asking him to go through it?

Mr. Dickinson: I will follow the suggestion; it may save time.

By Mr. Dickinson:

Q. On that same page take the Donora Steel Works, Donora, Washington County, Pennsylvania. Did it have twelve 50-gross-ton Siemens basic open-hearth furnaces with an annual capacity of 300,000 tons of ingots?

A. Ultimately when the plant was completed it did, but it did not have any such capacity as that in 1902, neither in 1903, nor did it have any capacity whatsoever of open-hearth steel ingots until 1904.

Q. But the works were being built, were they not?

A. The works had just started; it was in its preliminary stage in 1902, and it was proceeded with during 1903 and 1904, and in April, 1904, the first six furnaces were completed

for operation, and in 1905 the other six were completed. The capacity stated is correct.

Q. What do you state the capacity to be of all the furnaces?

A. Ultimately the capacity reached a higher figure than 300,000 tons.

Q. How much?

A. Between 400,000 and 500,000 tons.

Q. Take the Donora works, Donora, Washington county, Pennsylvania: How far were those works under way when it was taken over by the United States Steel Corporation; what plants then existing or being begun or under plan or afterwards completed, and what was the total capacity upon the completion of the entire plant?

A. You are referring to this Donora works?

Q. Yes, at Donora, Washington county?

A. That of course covers only the rod mills and the wire mills.

Q. Yes.

A. Those mills were not expanded after the Steel Corporation acquired it except as they have been incidentally increased from time to time; those were substantially completed.

Q. At the time, then, that they were taken over was the annual capacity 200,000 tons of rods?

A. I should have to refer to the record to give that.

Q. What was it in wire?

A. I should have to refer to the record to give you that.

Q. What was it in kegs of nails?

A. I should have to refer to my records to give you that.

Q. Will you do that?

A. If you wish.

Q. Take the Sharon works, Sharon, Pennsylvania. Was any of that completed after it was taken over by the Corporation, or was it a completed work when taken over?

A. This is referring to the wire works?

Q. Yes.

That was substantially completed when the Corporation took it over? It states here 180 wire-drawing blocks

and 181 wire-nail machines; product tin plate bars, wire rods, wire, wire nails, galvanized wire, barbed wire, and staples. Did it produce those products at that time?

A. It did.

Q. Did it have an annual capacity then of 97,000 tons of tin plate bars?

A. I cannot say as to that without referring to the record.

Q. Is that approximately correct?

A. I would not express an opinion.

Q. Did it have 105,000 tons of wire rod c

A. The same answer.

Q. 86,000 tons of wire?

A. The same answer.

Q. 900,000 kegs of wire nails capacity?

A. The same answer.

Q. Will you look this up?

A. Yes.

Q. Sharon Works, Sharon, Pennsylvania. The capacity here is stated at 45,000 tons. Do you know what that was, it says black plates for tinning?

A. Oh, yes, tin plate; that is my recollection that that is substantially its capacity.

Q. And did it have 20 sheet and pair furnaces, 6 double annealing furnaces, twenty 26-inch hot mills, and 15 sets of 22-inch cold mills?

A. I can answer that after referring to the record if you wish.

Q. Yes, please do that. Sharon Works, Sharon, Pennsylvania. It is set down here as having in 1901 and 1903, not yet put in operation, 10 pair and 10 sheet furnaces, 3 double annealing furnaces, 10 hot sheet mills and 6 cold mills. Do you know whether it had those or not?

A. I know they had a sheet plant there and that it did have that number of furnaces.

Q. What was the annual capacity?

A. I don't know about that.

Q. It says here 30,000 net tons.

A. I could not answer that.

Q. Will you get that?

A. Yes.

Q. The South Sharon Works, Sharon, Pennsylvania, put down here as having 12 50-gross-ton basic open-hearth furnaces with an annual capacity of 350,000 tons of ingots. What do you say about that?

A. That is correct as to capacity, but it was not all completed when the Steel Corporation took that plant over; some of these furnaces were completed afterwards.

Q. But taking it when completed that is correct, is it?

A. That is correct.

Q. "4 soaking pits, one 36-inch blooming mill, one 30-inch universal mill, and three 26-inch bull-head mills; product, blooms, billets, and universal plates." Did it produce those?

A. It did.

Q. The annual capacity is stated at 310,000 tons; is that correct?

A. I cannot answer that without referring to the record.

Q. Go to the bottom here: Total annual capacity of the six works given at "650,000 gross tons of open hearth steel ingots, 550,000 gross tons of slabs, blooms and billets, 97,000 gross tons of tinplate bars, 45,000 gross tons of black plates for tinning, 30,000 net tons of black sheets, 75,000 gross tons of universal plates, 305,000 gross tons of wire rods, 258,000 gross tons of wire, and 2,500,000 kegs of wire nails." Are those capacities there stated correct?

A. I could not answer that without verifying it.

Q. Will you examine and let me know?

A. Yes.

Q. Now, tin plate works, Sharon works, Sharon:——

A. Pardon me, Judge. We have just been over that.

Q. I have not asked you anything about boxes of tin plate.

A. That is right. This is the dipped plate, as distinguished from——

Q. The statement is here that the weekly capacity of the Sharon works, Sharon, Pennsylvania, is 18,000 boxes of tin plates. Is that correct, or would you want to examine that?

A. I would rather look it up, Judge Dickinson, but I could figure it here, I think, reducing boxes to tons.

Q. On the next page, wire and wire nail works: Donora works, Donora, Pa. The products given are wire rods; plain, galvanized and barbed wire; staples, and all sizes of wire nails. Is that correct?

A. That is really a duplication, if you please, of what we have been over before. It is comprehended in the same thing. You will see Donora, here, 200,000 tons of rods, 172,000 tons of wire, and 1,600,000 kegs of nails—identically the same thing you will find on page 22.

Q. But this is a resume of finished wire products, is it not?

A. Yes; but the same thing is on page 22.

Q. State whether or not those figures are correct.

A. The same——

Q. You cannot answer that?

A. I will have to verify it.

Q. The same thing about the nails? Is the Sharon works, right below there on the same page, a duplication also?

A. It is, yes; a repetition of the same figures.

Q. Coming down to "Galvanizing works;" is that a duplication—"Number of galvanizing pans, four; product, fence wire; annual capacity, 67,500 tons," under the head of "Donora Works, Donora, Pennsylvania;" is that correct or not?

A. I cannot answer that.

Q. Will you let me know?

A. Yes.

Q. You have the American Iron and Steel Directory for 1908 there, have you?

A. No; 1904. Do you wish it?

Q. No; I want to ask you about 1908; just about the dates of putting in operation. This is from the Iron and Steel Works of the United States for the year 1908, and on page 70 it purports to set out there the dates at which certain plants or works were put in operation. I would like to ask you about that, Mr. Filbert.

MR. REED: I object to the use of the memorandum, as it is not shown that it was prepared by the witness or has ever been called to his attention. I object to its use in this manner as improper cross examination.

By Mr. DICKINSON:

Q. Under the head of "Blast furnaces: Donora furnaces, Donora, Pa., operated by the Carnegie Steel Company of New Jersey: Two stacks, Nos. 1 and 2, each 85x22, built in 1902-4; No. 1 blown in January 3, 1905, and No. 2 February 7, 1905." Is that correct or not?

A. That is correct as to the month. I would not say the exact day of the month.

Q. "South Sharon Furnaces, South Sharon, Pa. Operated by the Carnegie Steel Company (of New Jersey). Three stacks: No. 1, one stack, 100x22, built in 1900-1 and blown in December 8, 1901." Do you know anything about that?

A. I do not know. That is before we got the property.

Q. That was in operation when you got it?

A. Yes, sir.

Q. "No. 2 and No. 3, two stacks, each 79x20, built in 1902-4; No. 2 blown in September 9, 1904, and No. 3, November 27, 1904."

A. Those are correct as to the months. I could not testify as to the days.

Q. Those are correct as to the months and years?

A. The months and year. 1904 was the last, was it?

Q. Yes.

A. That is correct.

Q. They are both 1904. One is put down as September and the other as November.

A. That is correct as to the month and year.

Q. (Reading) "Donora Steel Works, Donora, Pennsylvania. Operated by the Carnegie Steel Company of New Jersey. Built in 1902-3; 12 50-gross-ton Siemens basic open hearth steel furnaces with an annual capacity of 500,000 tons of ingots, four 4-hole soaking pits, and one 40-inch blooming mill; first made steel February 7, 1905, and first products rolled March 2, 1905." Are those dates correct?

A. February, 1905, is the correct date as to when the first steel was made, and I imagine that immediately following that they were rolling the ingots down.

Q. That is substantially correct, is it?

A. It is.

Q. After this Union Steel plant was taken over, and the work was proceeded with, how much money was furnished by the vendors for completing the works?

A. A little over $8,000,000.

MR. DICKINSON: That is all, Mr. Reed, with the exception that I may want to ask him something about this primary evidence that I called for.

MR. REED: We will look for that at the luncheon hour.

MR. DICKINSON: We might as well adjourn.

THE WITNESS: I will not be able to get this during the lunch hour. It is quite a range of stuff that you have called for.

MR. DICKINSON: We had better let Mr. Filbert go over, then, and take up the next witness.

MR. REED: I have a question or two to ask him before we take the recess.

MR. DICKINSON: All right.

REDIRECT EXAMINATION,

By MR. REED:

Q. You have given us the amount that was put into the Union Steel Company by the vendors for the new construction work and similar expenses. How much was put in by the Steel Corporation for the improvement and development of that Union plant?

A. We put in about ten and a half million dollars, and we paid off about $3,000,000 of outstanding notes payable of the Sharon Steel Company, making a total in round numbers of $13,500,000; and of that $13,500,000, $8,000,000 was obtained, or a little over $8,000,000 was obtained through the sale of bonds to the vendors of the Union Steel Company, leaving about $5,500,000 which the Steel Corporation advanced as original or new money.

Q. The $13,500,000 includes the amount which you have stated in answer to Judge Dickinson was put in by the vendors?

A. It does.

Q. You were asked on cross-examination whether you had

examined these contracts with the American Can Company and the National Transit Company and others in the preparation of Exhibit No. 42, and Exhibit No. 67, I think it is, which shows the average prices received by the Corporation from year to year. Would there be any purpose in examining those contracts before preparing such a statement?

A. None whatever.

Q. Does that statement, Exhibit No. 42, as you have corrected it in Exhibit No. 67, show correctly the amounts realized by the Steel Corporation for its shipments on account of those contracts?

A. It does.

Q. That is, are they included in the sales which are considered in making up those average prices?

A. They are. And the averages comprehend all shipments of each class of product.

Q. Whether on the American Can contracts or contracts to Tom, Dick or Harry?

A. Yes, sir.

MR. REED: That is all.

MR. DICKINSON: Now we will adjourn, Mr. Filbert, and when you are ready and it is convenient to other counsel, we will resume your examination.

MR. REED: All right.

(Whereupon a recess was taken until 2 o'clock p. m.)

AFTER RECESS.

JAMES H. REED,

a witness called on behalf of the defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION,

By MR. LINDABURY:

Q. You live in Pittsburgh, do you not?

A. Yes.

Q. And are a practicing lawyer there?

A. Yes.

Q. Were you connected with any of the steel manufacturing companies before 1901, as counsel, or otherwise?

A. As counsel; my firm was counsel for the Carnegie Steel Company and other steel companies in Pittsburgh.

Q. There has been put in evidence in this case some testimony with regard to the attempted organization of a selling company called the Empire Rail Company, in 1898; do you remember about that, Judge?

A. Yes, very well.

Q. Were you advised with about that?

A. I was.

Q. By whom?

A. By the Carnegie Steel Company or by Mr. Schwab.

Q. On behalf of the Steel Company?

A. On behalf of the Steel Company.

Q. What other companies besides the Carnegie were interested in that scheme?

A. The Federal Steel Company, the Pennsylvania Steel Company and the Cambria Steel Company I think were the four.

Q. Any others, or don't you remember without their being named?

A. I do not remember. Let us see. John Gates represented some company.

Q. He was then president of the American Steel & Wire Company?

MR. COLTON: In the beginning of the negotiations he would have been with the Illinois Company. Maybe that is what he is thinking of.

THE WITNESS: I remember he was in and out of the room, and I will tell you, the Colorado Fuel & Iron man was there, too.

By MR. LINDABURY:

Q. This was after the Federal Steel was formed?

A. After the Federal Steel was formed; Judge Gary had

come down here and opened offices on Wall Street and was engaged in organizing his departments.

Q. My recollection is that Mr. Gates was not connected with the Illinois after the Federal Steel was formed. I am right about that am I not?

A. Those were the four or five prominent companies.

Q. Mr. Gates you think was in some way interested?

A. He was there occasionally in the room.

Q. Did you have anything to do with drafting the charter or plan of organization?

A. Yes; I spent off and on nearly a month down in New York with representatives of the other companies. There were other lawyers. I do not remember now. Judge Gary took an active part for his company.

Q. You do not remember how many lawyers co-operated with you representing these other companies?

A. There were three or four of them.

Q. What was the scheme generally, Judge?

A. Generally the scheme was to form a corporation under the laws of New Jersey, I believe, to buy and sell iron and steel products. The purpose was to have each one of the rail manufacturing companies sell to the Empire Steel Company, I believe is the name, such rails as it ordered, and each one of the manufacturing companies was to take stock in the selling company. These rails were to be sold at a fixed price—I do not mean fixed forever, but it was not dependent upon what the Empire Company resold them at.

Q. You mean they were to be sold to the Empire Company?

A. Sold to the Empire Company, and the Empire was to make its own sales, and the manufacturing company would get a dividend on its stock. The sale was to be outright, and the capital was to be large enough to make the Empire Company a substantial company, so that if it made any sales and lost money on them, that was to be its own loss.

Q. Was the Empire Company to be controlled at all in those sales?

A. No, it was to manage its own business.

MR. DICKINSON: Are you asking for anything different from what is in this agreement?

MR. LINDABURY: Not at all.

THE WITNESS: I am speaking now of something that I haven't looked at in ten years, but that is my recollection.

Q. Judge, as the Sherman Law was then understood among lawyers, was there anything in this scheme that was contrary to it?

MR. DICKINSON: Objected to as irrelevant.

THE WITNESS: We thought at the time it was not a violation of the Sherman Act.

By MR. LINDABURY:

Q. Do you know, Judge, whether or not selling companies of that character were more or less common at that time?

MR. DICKINSON: Excepted to as irrelevant.

A. I believe they were. I think we had based this on some other company of the kind that was a sort of a model.

By MR. LINDABURY:

Q. Judge, did you have any professional relations with Mr. Andrew Carnegie at that time?

A. Yes, in a way.

Q. And what were those relations?

A. Well, our firm represented his company.

Q. That you told us.

A. I do not think he had much business of his own at that time, but I used to see him quite frequently.

Q. Did you do any business for him as counsel?

A. I do not think he had, Mr. Lindabury, any of any consequence at that time.

Q. Did you know at the time of any desire or effort on the part of the Carnegie partners to sell the Carnegie properties in the year 1899?

A. I heard of it; yes, sir.

Q. From whom? The parties themselves, or outsiders?

A. I heard of it from the parties themselves at the time of what was known as the Judge Moore option.

Q. Do you remember any prior attempt to sell out on the

part of any of the Carnegie interests, Mr. Frick or any of the others?

A. I did not know it at the time, but I heard it afterwards.

MR. DICKINSON: We object to what he heard as incompetent and hearsay.

By MR. LINDABURY:

Q. I suppose you had no professional contact with the Moore-Frick option, did you?

A. My partner, Mr. Knox, wrote that option, and I only knew of it in that way.

Q. What is Mr. Knox's first name?

A. Philander C. Knox?

Q. What was the name of the firm at that time?

A. Knox and Reed; continued in that name until he was appointed Attorney-General, and then it was changed.

Q. What is the firm name now?

A. Reed, Smith, Shaw & Beal.

Q. The Carnegie management was originally a partnership, I believe, was it not?

A. A limited partnership.

Q. When was it turned into a corporation?

A. In the spring of 1900, turned into two corporations.

Q. What is that?

A. Two corporations were formed at that time.

Q. What were they?

A. The Carnegie Company was the holding company of the stocks of the Carnegie Steel Company, the Frick Coke Company and the Bessemer & Lake Erie Railroad Company; the Carnegie Steel Company was organized under the laws of Pennsylvania, and was the operating company.

Q. What do you know of the desire of the stockholders of the Carnegie Company to sell out in the year 1900?

A. I think they were all desirous to make some permanent disposition of the property, for several reasons.

Q. There had been dissensions among the partners a year or two before, had there not?

A. Yes; that is a mild word for it; there had been quite

serious dissensions between Mr. Frick and Mr. Carnegie, as the leaders.

Q. Resulting in ligitation?

A. Resulting in litigation.

Q. That was ended, I believe, by the organization of the corporation or corporations?

A. Ended by the formation of the two corporations of which I have spoken.

Q. Was entire harmony restored between the gentlemen by its organization?

A. No, sir; it was not.

Q. Now, did you learn from these gentlemen themselves of their desire to sell out in 1900, or from any of them?

A. Why, I could not say that it was said in so many words, but I know that it was their desire, as I say, that some permanent disposition should be made of the property for the reason that Mr. Carnegie was growing old. He had the majority interest in the company. A manufacturing company like the Carnegie Steel Company that was intensely active could not be successfully operated with the majority interest in the hands of trustees in case of his death. He himself was anxious to get out of business and get his interest in these concerns put into investment shape, and so you can see that generally there was a desire among all of them to have some kind of a disposition made of the property during his lifetime that would be permanent.

Q. Was Mr. Carnegie giving a personal and immediate attention to the business during that time?

A. He was, but not in the sense of being on the ground. He was either in New York or Skibo, and was getting constant reports, and he was seeing the various officers of the company frequently and he was sending them advice from time to time.

Q. Skibo is where?

A. In the north of Scotland.

Q. About how much of the year was Mr. Carnegie spending there at that time?

A. About half of it.

Q. And the other half in New York?

A. In the United States; either in New York, or during the winter, in the South.

Q. But formerly, in earlier days, he had been in Pittsburgh and attended personally and actively to business, had he not?

A. I believe until about 1880, when he moved to New York.

Q. Was that so early as that?

A. Yes, I think about that time, but he was within practical reach of the business whenever he was in the United States.

Q. He could reach it by letters, could he not?

A. Yes, and telegrams.

Q. Do you know whether he was desirous of giving up even that connection with the business, aside from his desire to put his holdings in investment shape? Do you know whether he wished to be relieved of the care and attention and thought that the business required of him, and to devote his time and thought and energies to other things?

A. Yes, I think he was.

Q. What was it that he contemplated, if you know, from him?

A. What he has done since; that is, devoting himself to philanthropy and peace, and one thing and another.

Q. Did you yourself have anything to do with the offer of the property in the year 1900?

A. No, sir.

Q. When did you first hear, if you happen to recall, of the offer of the property to the Federal Steel people through J. P. Morgan & Company or otherwise, and of their entertainment of the offer?

A. While I was at the dinner that was given to Mr. Schwab at the University Club in the winter of 1900.

Q. I suppose you had nothing to do with the arrangement of that dinner?

A. No, sir.

Q. But you were there as a guest?

A. I was there as a guest.

Q. Were there any speeches made at that dinner?

A. Two.

Q. Who made them?

A. One was by Mr. Simmons, the host, saying that he did not intend to ask anybody else to make a speech except Mr. Schwab, explaining that he was giving this dinner to Mr. Schwab as a return for certain courtesies that had been shown to him by Mr. Schwab and the officers of the Carnegie Steel Company, when he came to Pittsburgh to examine an armor proof vault that had been put in one of the banks and had been shown around the mills, and so on, and then he called on Mr. Schwab to make a speech.

Q. And Mr. Schwab made it?

A. Yes; Mr. Schwab talked there for half an hour or more.

Q. Can you tell us what the burden of his speech was?

A. Well, he started out by saying that he could not talk about anything but steel. I remember that, because he always starts every speech that way. He then went on to talk about the growth of the steel business in this country, how it was doubling up every few years, and the enormous possibilities there were in the business, and especially in the foreign trade, and the importance of large tonnage; I mean plants that could manufacture large tonnage at low cost. Then he said a few nice things about the Carnegie Steel Company and its ability to do it, and so on.

Q. Was Mr. Morgan at that dinner?

A. J. P. Morgan was there and sat alongside of him.

Q. Alongside of Mr. Schwab?

A. Yes.

Q. Was Mr. Carnegie there?

A. He came in and went away.

Q. He went away just before that speech, did he not?

A. He was not at the dinner at all. He came in just before they sat down at the table, and excused himself. He had another engagement, at the St. Andrews Dinner, or somewhere.

Q. Did you see anything of Mr. Schwab or Mr. Morgan after the dinner?

A. Yes; they sat there after the dinner broke up and the men were standing around. I remember noticing them. They

went and sat down in the corner and talked for fifteen or twenty minutes, perhaps longer.

Q. How soon after that did you hear of a movement on foot looking to the purchase of the Carnegie properties through J. P. Morgan & Company?

A. It is a good while ago, and I do not want to be pinned down to dates, but I suppose it was about six weeks or so.

Q. You do not remember the date?

A. No; I do not.

Q. Where were you at the time?

A. I think I heard it from Mr. Schwab in Pittsburgh.

Q. Were you called upon to take any part in preparing legal papers?

A. Not prior to what you might call the closing up of the arrangement; I mean the understanding between Mr. Schwab and Mr. Morgan. I was notified to keep myself in readiness, and was called down here as soon as the trade was practically settled, and spent, I suppose, a month or more here, working on the mortgage.

Q. The mortgage——

A. The mortgage of the corporation which secured the bonds to Mr. Carnegie and the Carnegie interests. Mr. Morawetz and I wrote that mortgage in consultation with Mr. Stetson.

Q. Did you at any time take part in the formulation of a contract between Mr. Carnegie and J. P. Morgan & Company?

A. Yes, sir.

Q. Do you remember when that was?

A. It was some time in February, about a week after I had come down here. I was in and out of Mr. Morgan's office all the time—a back room they used to have in the old building; and he called Mr. Stetson and myself one day, and at that time I think it had been published, and I think he had sent out his circulars to the various companies; and he told us in substance that he had just——

Mr. Dickinson: I object to what Mr. Morgan told Judge Reed as incompetent, irrelevant and hearsay.

By Mr. Lindabury:

Q. Well, we will hear it.

A. He told us in substance that he had just awakened to the fact that he was making contracts here with stockholders of the Federal, the National, the National Tube, and so on, and he had not a scratch of the pen from Mr. Carnegie under which he could hold him or hold his estate if he died. He said: "You men go up the street as fast as you can and get me something." We took the elevated and went up to Mr. Carnegie's house, and explained what we were there for. He had a little room next to his library, and he was getting begging letters by the bushel; that is literally true. They were carrying them in in bushel baskets, from people wanting wooden legs, and everything imaginable. His own secretary had not time to open them, so they had to send a young man from the Carnegie Steel Company's office to turn the letters over and throw them in the waste basket when they did not seem proper to keep; and he went in and asked him if he was a stenographer, and he said he was; and he said: "You take a letter for these gentlemen." Mr. Stetson and I then, with occasional interruptions from Mr. Carnegie, dictated a letter to Mr. Morgan, or to J. P. Morgan & Company, which Mr. Carnegie signed, and we took the original down with us to Mr. Morgan, and he seemed quite relieved.

Q. Have you that original?

A. I have never seen the original since that day. My recollection is that I had a copy of it. I don't think we left any with Mr. Carnegie; it was not interesting to him.

Q. Have you inquired of——

A. (Interposing.) I have searched for my own, but I cannot find it.

Q. Have you inquired of Mr. Carnegie's representatives in this country?

A. Yes, but his house is locked up and there is no one there but the caretaker. They offered to let me in, but I did not know where to search. I am satisfied he hasn't any copy of it. It didn't interest him.

Mr. Colton: I thought you had a copy.

Mr. Lindabury: I did have a copy of it taken from the

files, and I thought I had it here. I was going to show it to Judge Reed, but I haven't it with me.

By Mr. Lindabury:

Q. Do you remember seeing yesterday the copy, or a supposed copy, of that letter produced here from the files of J. P. Morgan & Company and marked for identification in this case?

A. I saw a letter that you handed me. I did not notice the marking; I could not remember the marking.

Q. Are you able to identify that as a copy?

A. To the best of my recollection that is a copy of it.

Q. Did you have any part in the formation of the United States Steel Corporation otherwise than as you have now mentioned, the drafting of the mortgage, and the part you took in drafting this contract?

A. I suppose I did while I was around here doing that work. I was more or less in touch with everything that was going on, to that extent.

Q. Did you have any part in negotiating with the owners of any of the subsidiaries?

A. No, sir.

Q. In so far as you co-operated in the formation of the United States Steel Corporation and met and talked on the subject of that organization with the other gentlemen who had a part in it, can you tell us whether any consideration was given to the acquisition of a monopoly through the organization of that company?

Mr. Dickinson: This is objected to as irrelevant, and also as involving a conclusion of the witness upon undisclosed evidence of facts, whatever they were.

The Witness: There was a tremendous amount of talking going on, and a great deal of newspaper talk and publication about the formation of this Corporation, and I would hate to say whom I heard talk and whom I did not, but I will say that no responsible party connected with the formation of the Corporation, from Mr. Carnegie and Mr. Schwab clear down the street into Mr. Morgan's office—Judge Gary, and so on—ever talked in my presence about anything of that kind, such as a monopoly or anything of that sort.

By MR. LINDABURY:

Q. Did you yourself, in so far as you participated, intend to establish a monopoly, or did anybody else with whom you co-operated, so far as their intention was made known to you, contemplate the formation of a monopoly?

MR. DICKINSON: Objected to as irrelevant.

THE WITNESS: No, sir.

By MR. LINDABURY:

Q. Was the matter of suppressing competition between the constituent companies considered by you or by anybody, so far as you know?

A. Suppression of competition between the constituents?

Q. Was the organization for the purpose of suppressing any competition which existed between what became the constituent companies?

A. No, it was not for that purpose.

MR. DICKINSON: This question is objected to as irrelevant and incompetent.

By MR. LINDABURY:

Q. What was its purpose, as you understood it?

MR. DICKINSON: The same objection.

THE WITNESS: Of course, when these corporations were all acquired and the stocks were held by the one company, naturally competition between them was a thing of the past; it could not be otherwise, but that was not the purpose.

By MR. LINDABURY:

Q. What was the purpose of the organization of the Steel Corporation as you understood it?

MR. DICKINSON: Objected to.

THE WITNESS: Do you mean Mr. Carnegie's purpose, or the purpose of the formers of the corporation?

By MR. LINDABURY:

Q. The purpose of the formers of the Corporation, in so far as that purpose was disclosed to you in the part you took in its formation?

MR. DICKINSON: That is objected to because there is no evidence showing what disclosures were made upon which the witness is asked to give a conclusion, and it is objected to as irrelevant and incompetent.

A. So far as I heard the purpose discussed, it was consistent with what I have said about Mr. Schwab's remarks at that dinner, which was the formation of a company large enough and strong enough to build up an export trade all over the world, to conduct its operations on such a scale as to result in a minimum of cost and greatest economy, and generally to make a success for the company in that way.

By MR. LINDABURY:

Q. Were there strong manufacturing corporations left out of the organization?

MR. DICKINSON: That is objected to because the meaning of "strong" does not delimit it. It is a word of comparison and calls for a conclusion of the witness upon a statement that does not give any basis for estimating the value of his answer.

THE WITNESS: There were a number of steel corporations and partnerships of large capacity that were left out, yes.

By MR. LINDABURY:

Q. Do you think it would have been possible to acquire a monopoly without taking them or some of them in?

MR. DICKINSON: That is objected to as incompetent and calling for an opinion of the witness, and as irrelevant.

MR. LINDABURY: I will withdraw that question because of the objection, and because he was not a steel manufacturer but a lawyer.

By MR. LINDABURY:

Q. I will call your attention to a letter from Mr. Carnegie to J. P. Morgan & Company, dated February 26, 1901, to which reference has already been made, and which is marked "Defendants' Exhibit 32 for identification." Do you identify that as a copy of the letter which you referred to as having been drafted in Mr. Carnegie's house?

A. That is the letter.

Q. Who co-operated with you in the preparation of that letter?

A. Mr. Francis Lynde Stetson.

Q. I show you a reply to that letter dated March 2, 1901, marked "Defendants' Exhibit 33 for identification"; can you remember that being received from Mr. Morgan?

A. I am sorry to say I do not.

Q. You don't remember that?

A. No, I never saw that before.

Q. Do you remember that any acceptance of any kind was received?

A. Well, I have a dim, indistinct recollection of Mr. Carnegie telling me that he had received some response, but I could not remember.

MR. DICKINSON: What Mr. Carnegie stated is objected to as hearsay.

THE WITNESS: There was not any doubt about its acceptance, because we paid a state call to Mr. Morgan a few days afterwards.

By MR. LINDABURY:

Q. Who were "we"?

A. Mr. Carnegie said that this——

MR. DICKINSON: I object to the witness stating what Mr. Carnegie said.

THE WITNESS: (Continuing) Mr. Carnegie said he was going to Europe because he was tired of so much commotion, and he thought before he went he would go down and call on Mr. Morgan, so I went along as a sort of bodyguard, and we called on Mr. Morgan in state and stayed there about 15 minutes, and I remember Mr. Carnegie saying as he left the room, "Now, Pierpont, I am the happiest man in the world, I have unloaded this burden on your back and I am off to Europe to play."

Q. You were elected, I think, one of the first directors of the company, were you not?

A. Yes.

Q. Do you remember at whose instance?

A. Well, I was informed that out of compliment to Mr. Carnegie he had been asked to name one or two directors and had named me as one.

Q. Judge, what connection have you had with the Bessemer Railroad Company?

A. I have been president of it since 1896.

Q. That means that you are now president of it?

A. That is, of the Pittsburgh, Bessemer & Lake Erie, and the Bessemer & Lake Erie, which is its lessee. Yes, I am president of it.

Q. What is the business of those companies chiefly?

A. Well, the Pittsburgh, Bessemer & Lake Erie is the owner of the railroad, and the Bessemer & Lake Erie is the lessee and operating company. The business is principally carrying ore south and coal and manufactured products and one thing and another north, together with such business as incidentally arises along the line of the road, passenger business.

Q. Does the company carry material for other steel manufacturers than the Steel Corporation?

A. We do when it offers. We do not carry ore south because we do not connect directly with any other mills, but we have carried tonnage for other steel companies. We are shipping a lot of rails for the Cambria Steel Company; that came over the Pennsylvania Railroad, and we have carried it up to Conneaut. We have done that for two or three years.

Q. Has that company ever given any preference to the business of the Steel Corporation over that of its competitors?

A. No, sir.

Q. Has there ever been any complaint upon the part of customers of that company with the service rendered to them?

A. I will say, generally, no. We have the most, I think the most contented lot of shippers along that line of railroad. We never had but one complaint to the Commisssion, and that was a technical question as to whether we should carry cannel coal under bituminous coal rates, and that was referred to the Commission for decision. Of course I won't say there is not occasionally somebody growls because a train is late, or something of that kind, but we have had no trouble.

Q. And have you had any complaints with regard to rates?

A. No, sir.

Q. So far as you know, has the service and the charges been satisfactory to your customers?

A. Yes.

Q. During all of this period?

A. I think I am in a position to know, and I say it has.

Q. You have been the active president for all this time?

A. Yes. We have always felt we had the Steel Corporation business, it could not get away, and we have tried to build up the others so far as we could, and I want to say that when I was employed to take charge of that railroad when it was acquired by the Carnegie Steel Company I was told by Mr. Frick that I was to run that railroad on its own merits and I was not to be interfered with. Of course I took that with qualifications, that I was not to run it as if I owned it, but I never have been interfered with, and it has been run in accordance with the general rules and laws that ought to govern any well regulated railroad.

Q. Without any reference to the fact that it was owned by the Steel Corporation, or without any preference in favor of the Steel Corporation?

A. Yes, sir.

Q. Do you know anything about the negotiations which resulted in the acquisition of the Union Steel by the U. S. Steel Corporation?

A. Something.

Q. Did you have anything to do with the start of those negotiations?

A. I was in New York. I got a telegram from Mr. Frick from Pittsburgh asking me to meet him the next morning, which I did, at the Union League Club. He told me that as I knew, because it had been done through our law office, the Sharon and Union Steel Companies had about completed their amalgamation, and this was an opportune time, if the Steel Corporation wanted to acquire those plants, to take up the matter before they had formally committed themselves to plans for the future; that he was very much embarrassed by the fact that he was a director and large owner in the Steel

Corporation and also a large owner in the Union Steel Company, a thing, of course, that he had not thought of when he went into the Union Steel Company, because the Steel Corporation had not been thought of at the time, and he personally would like to see those two companies brought together, and after talking a little while about it, I called up Mr. Gayley, who was the first vice-president of the company, Mr. Schwab being in Europe, and asked him to stop on his road down street, and following our talk he came down and saw Judge Gary and Mr. Perkins, one or the other of them, and that led to the negotiations between the parties which resulted in the drawing of the contract between the Union Steel Company and the Corporation, which was drawn in our office by Mr. Beal, one of my partners, and myself.

MR. DICKINSON: All of the foregoing answer which states conversations with Mr. Frick and others is objected to as irrelevant.

By MR. LINDABURY:

Q. Who attended on behalf of the parties to the drawing of that contract?

A. Why, I think Mr. A. W. Mellon was the active party on the part of his people, and I do not know that anybody on our side except myself.

Q. Except yourself?

A. Yes. I got a general idea of what the Corporation wanted, and terms; I had been out with Judge Gary and the finance committee when they looked over the plans and I knew what they wanted in the contract, and got it ready.

Q. Had the parties agreed between themselves previous to that?

A. Yes.

Q. And you were simply attempting to formulate it?

A. Yes.

Q. Was any part of that agreement that the sellers or any of them should be put under contract not to compete for a period of years?

A. Why, yes; that was mentioned by somebody or it would not have been in the contract. It was mentioned by some-

body on our side as a proper thing to agree to, and put in the contract, and it was consented to without any question by the other side.

Q. When was that suggestion made?

A. I cannot tell you; somewhere along in the negotiations. I might have suggested it myself, or somebody else may have suggested it.

Q. You do not remember about it?

A. No, sir; I do not.

Q. Do you think it was suggested before the——

A. (Interposing.) I think if I did I would be rather proud of it.

Q. What is that; I did not get it.

A. If I suggested it I think I would be rather proud of thinking of it, because I think it was a proper provision.

Q. Nobody is questioning that except Judge Dickinson.

A. I do not want to take credit for doing it.

Q. But my inquiry was as to whether it was suggested by anybody until you say you drew the contract with Mr. Mellon——

MR. DICKINSON: I am not questioning anything relative to the ability involved in drawing it.

THE WITNESS: I ought not to have said that, perhaps. I do not know who suggested it. It was said by somebody, of course. I do not think it was suggested by any of the vendors, and yet it might have been as something that they were willing to do; it was not treated as a matter of very great importance. It was not a condition of the sale at all.

Q. That is what I was coming to: Why do you say it was not a condition of the purchase? I suppose you mean that.

A. I say it just because it was not. It did not come up in the first instance at all as a question that we would buy this plant providing you people agree to go out of business. It came up incidentally, after the terms had all been agreed upon.

Q. Did you know anything about the purchase of the Clairton Steel Company in 1904?

A. Well, I knew about it. I had not a great deal to do with it.

Q. Did you know about the previous offers of that?

A. No, sir.

Q. Do you know what the condition was of that company at the time of purchase and of its owner, the Crucible?

A. They were pretty badly involved at that time. The Crucible Steel Company had undertaken to finance and build the Clairton plant and with stringent financial conditions in Pittsburgh, and I suppose here, they ran out of money. The Clairton company was put into the hands of a receiver, and a lot of the Crucible stock, which was a favorite investment with widows and orphans around Pittsburgh because of the respectability of its directors, dropped from 90 down to 10. There was a great deal of trouble all around. They were very glad to find somebody to take that plant.

MR. REED: It dropped from 90 down to 10?

MR. DICKINSON: I did not catch that, Judge.

THE WITNESS: I won't be sure about the 10; but it was 15, or somewhere along there. It quit paying dividends. I will not guarantee that it went down to 10, but it went pretty close to it.

By MR. LINDABURY:

Q. It dropped away down, anyhow?

A. Oh, yes.

Q. Did the Crucible pay dividends about that time?

A. No; it suspended dividends for a couple of years. It was three years, I guess, before it started again.

Q. Judge, I want to ask you a few questions as to the policies and practices of the Steel Corporation. You have been a director all the time, I think, since your election on the first board, have you not?

A. Yes, sir.

Q. Has the company had any particular policy with regard to the publicity of its affairs?

MR. DICKINSON: That is objected to as irrelevant.

THE WITNESS: Yes; from the first it has been the policy

of the Corporation to make public everything that it consistently could make public, in connection with its business.

By MR. LINDABURY:

Q. You were familiar with the corporate practices and management before that date; was its policy in this respect different from that which previously prevailed in Corporation practice?

MR. DICKINSON: This is objected to because it does not show what familiarity the witness had other than being a lawyer. It does not show the character of things to which reference is made, or what practices of other corporations he was familiar with, or what practices of the United States Steel Corporation are referred to. It is objected to as irrelevant and incompetent; also on the ground that the witness has not testified to having any such experience as indicated in the question.

THE WITNESS: Up to that time the general practice of corporations, I think, had been toward what you might call a reticence in regard to the statement of their business conditions, except as they were required to make such statement in annual reports. Even then, they were not very free. I think I remember one illustrious case, that of the American Sugar Company, where the stockholders never did know whether the company was making money or whether it had any.

By MR. LINDABURY:

Q. What has been the character of the publicity of the Steel Corporation?

A. It has been just the reverse.

Q. What do you mean by that?

A. I mean from the start—and Judge Gary is entitled to the credit for it, of course—he argued and had his own way about it, that the Corporation should make full reports from time to time of its conditions, and that its annual reports should be a complete disclosure of its affairs, so far as they could be detailed in any volume of decent size that anybody would ever read; and, so far as consistent with duty to the

owners of the property, that its methods should be open; generally, that there should be publicity about its affairs.

Q. Has it pursued that policy consistently?

MR. DICKINSON: The same objection.

THE WITNESS: I think it has; yes, sir.

By MR. LINDABURY:

Q. What has been the policy of the Corporation with regard to its competitors, or the method of carrying on its business in a competitive way?

A. I have sometimes thought it was entirely too kindly.

MR. DICKINSON: I would like to object to this, on the ground that it has not been shown that the witness is qualified, or that he has had experience which justifies his speaking along these lines.

THE WITNESS: Mr. Lindabury, if I may go on?

By MR. LINDABURY:

Q. Yes; go on, Judge.

A. As far as I had any education in this line of business it was through my connection with the Carnegie Steel Company. The policy of the Carnegie Company was to go and get business, to take it wherever it could get it, and keep its mills running full, and run regardless of the feelings or prosperity of its competitors. I stil have a little of that lingering in my system, I think, sometimes.

Q. Whether you agreed with it or not, or whatever your views may have been, what was the policy adopted by the Steel Corporation, and what has been its policy?

A. Its policy has been that of exceeding fairness towards all its competitors, its customers, and its employes.

Q. And how has that policy been pursued with respect to competitors—which we are now talking about How has it been fair? What has been the practice?

A. I think in some cases to the utmost of Christian forbearance. There are lots of times when if I had been in Judge Gary's place I think I would have hit somebody over the head—some competitor.

Q. Has the Steel Corporation, so far as you know, ever

tried to get the customer of a competitor away by some secret price?

MR. DICKINSON: Objected to, because the witness has not qualified or been shown to have any knowledge on that subject.

THE WITNESS: That is a pretty large sized question.

MR. DICKINSON: Yes; I think it is.

THE WITNESS: So far as I know, it has not.

By MR. LINDABURY:

Q. Judge, you have been a director of the Carnegie Steel Company ever since the Corporation was formed, have you not?

A. Yes, sir; I have.

Q. And ever since 1903 you have been Chairman of the Board, have you not?

A. Yes, sir.

Q. And that is the operating company, is it not?

A. Yes.

Q. And the largest operator of the constituent companies of the Steel Corporation, isn't it?

A. Yes.

Q. Now, you have had opportunity, as chairman of that board and also as a director of the Steel Corporation, to know something about competitive conditions and practices, have you not?

MR. DICKINSON: I object to that as leading.

THE WITNESS: I think I have, yes.

By MR. LINDABURY:

Q. Then, has the Steel Corporation—I will repeat—ever attempted, so far as you know, or has been brought to your attention, to obtain the customers of its competitors by secret or underhand methods of any kind?

A. I have never heard of a complaint of that kind, Mr. Lindabury.

Q. Has it ever attempted to drive a competitor out of any particular locality by offering its products in that locality at

a lower price than that which was prevailing elsewhere, so far as you know, or has come to your knowledge?

A. No, sir; I have never heard of a case of that kind. I have talked to a great many people all over the country at one time or another, competitors and customers, and many of the foremen and workmen, and barring the question of a supply man who wants to sell something to you and who is never satisfied, of course, unless he sells you 150 per cent. of what you need, I have never heard any complaint of the Corporation's acts.

MR. DICKINSON: I object to this because the witness was not asked about complaints or inquiries of people at all.

By MR. LINDABURY:

Q. Have you ever taken any pains to ascertain whether or not the service of the Corporation was satisfactory to its competitors?

A. I think I have; I have talked, as I say, to people in different localities, you might say from the Atlantic to the Pacific, and tried to find out whether there was any complaint; not that I considered that my business, but in general conversation I tried to find out how the Corporation was regarded, and I have always found that among its best friends were its competitors. Customers were satisfied. I can give you one illustration, if you want me to.

Q. Do so.

A. I was out in San Francisco about a year and a half ago, and there was an old man there about 80 years old. He was one of the Argonauts, who went out there in 1850, and I was talking to him about the fire, and he told me about how everything he had was burned in his business place, and the fire came up to across the street from his house, and then he said, "After the fire," he said, "you fellows sent a lot of sales agents out here," and he said, "I never was treated like I was by that Corporation." I thought, "Well, here is where I am going to get some dissatisfaction," so I said, "What did they do to you that wasn't right?" He said, "They didn't do anything that wasn't right. They said, 'How much do you want to start up?' and I said, 'About $300,000

worth of stock,' and they said, 'Well, you can have it and pay for it when you can.'" That is what he meant when he said he had never been treated like that before, and then he went on and talked about that for a good while.

Q. Did you ascertain what was the sentiment of other customers out there in California, or San Francisco?

MR. DICKINSON: Excepted to as irrelevant.

THE WITNESS: So far as I could in the few days I was there. With people I talked to I found the general sentiment was like that.

By MR. LINDABURY:

Q. Did he tell you what the sentiment of the others was?

MR. DICKINSON: Objected to as hearsay.

THE WITNESS: Why yes; he said the sentiment of the city was strongly in favor of the Corporation. It had lots of friends out there, he said.

By MR. LINDABURY:

Q. Did the question of rebates ever come up in the early days of the Corporation, do you remember?

A. What do you mean by rebates, railroad rebates?

Q. Railroad rebates.

A. Do you mean on the Bessemer Road? I don't understand.

Q. Yes, the Bessemer Road or any other roads, if it came up at all, and how it was dealt with.

A. It never came up with the Bessemer Road, because we were law-abiding citizens, but I think I know what you mean. That is, whether the Corporation would take rebates?

Q. Yes.

A. Well, I remember general instructions from Judge Gary as chairman, that if there was anything of that sort going on it was to be stopped.

Q. Do you happen to remember the year?

A. Oh, no, but it must have been around 1902 or 1903; somewhere along there.

Q. But you do remember the incident, do you?

A. I do now, since you speak of it, but not being guilty myself, I do not think I ever thought of it again.

Q. What was the policy of the Corporation in regard to labor?

MR. DICKINSON: Objected to as irrelevant.

THE WITNESS: The policy of the Corporation in regard to labor has always been very liberal. It has made advances, at least one advance, that was unsolicited, and I think two, and carried its men all through the depression of 1907 without any reduction. It was the pioneer, I think, in the "Safety First" business; in other words, the safety of employees, putting up signs and putting up safety guards, and, in fact, safety has gotten to be a fad with the Corporation, and the committees, I think, sometimes are more or less of a nuisance. And we have a sanitary committee and we have a relief fund and we have a pension fund—all these things in the interest of the workmen.

MR. DICKINSON: All of this is objected to as irrelevant.

By MR. LINDABURY:

Q. Let us know a little more about this safety matter. How is that looked after?

A. It is looked after by inspectors, by committees among the men themselves, and by way of making sure that the mill or the railroad is sufficiently supervised, they usually send somebody from somebody else's mill to look over that mill, and from that mill to look over somebody else's, and make all the criticisms they can. We have a committee on the Bessemer Road, and I suppose the other railroads have the same, a committee of the men. That changes from month to month, and these men go over the road, and they make any suggestions as to dangerous points, and ask questions that come into their minds, and they are reported and looked into and remedied. These are committees of the men themselves.

Q. These are committees of the men themselves who work on the railroad?

A. Yes.

Q. Who are they—engineers and trainmen, or what?

A. Trainmen and some shop men, section foremen, and men of that kind.

Q. Committees representative of the different branches of labor?

A. Yes.

Q. And they go over, examine and report defects and make suggestions?

A. Yes.

Q. Is that done in these steel mills, too?

A. I am not so familiar with the steel mills as I am with the railroad, and I do not know whether there are committees from the mills working all the time in the mill itself, but I think there are, and there are certainly visiting committees who go around and find fault with the other man's mill, which is a very effective way of getting at it.

Q. How do you find that more effective than to confine an inspection to the men within the mill?

A. If you walked down Broadway every day for a year, there are lots of things you never see at all, whereas if a stranger walks down he would see the dangerous places. If you sent somebody from the Homestead mill over to Duquesne he is apt to see something wrong there that the Duquesne man might have stumbled over for a year and not have noticed; and, vice versa.

Q. He is going there to look for trouble?

A. I say, that is illustrative.

Q. That is what he goes there for?

A. Certainly he does.

Q. Has that been productive of results, that system?

MR. DICKINSON: Excepted to as irrelevant.

A. Yes, I think it has. Take our own railroad for illustration. Everything is reported. If a man gets a cinder in his eye that is reported as an accident, and consequently our reports show more accidents, but when they come to a serious nature I think there has been a very great reduction in the number of serious accidents, and I think in the mills it is even greater than that; it must be.

Q. Do you attribute that to this co-operative supervision by the men themselves to some extent?

A. Very largely.

Q. Did I understand you, Judge, that these committees are changed from month to month so that you have new men?

A. I suppose they do it differently in different companies, but it is either from month to month or from quarter to quarter; it is new men anyway.

Q. So you have the benefit of fresh minds?

A. Yes, sir.

Q. Judge, how many subsidiaries has the Steel Corporation now, ten or eleven, something like that; I don't care about the exact figure.

A. If you say ten or eleven I accept that as right.

Q. Do the presidents of those subsidiaries have stated meetings?

A. They do not have stated meetings, but they have meetings through the year, maybe four or five.

Q. Several a year?

A. Several a year.

Q. And do you ordinarily attend those meetings?

A. Yes.

Q. Does everybody among the officers of the Steel Corporation attend?

A. The president is there, and Mr. Kerr; you might say all the officers here, the operating officers; Mr. Kerr, the vice-president, Mr. Rice, Judge Gary, he comes in and out; he is there part of the time. The meetings are presided over by Mr. Farrell if he is in the city.

Q. Have the policies of the Steel Corporation in respect to labor, treatment of customers, and treatment of competitors been declared at those meetings by Mr. Gary?

Mr. Dickinson: This is objected to as incompetent and as introducing declarations made by representatives of the Corporation at a time not indicated, and declarations which are not shown——

Mr. Lindabury: I will withdraw the question since you object to it in that form.

By Mr. Lindabury:

Q. Have the policies of the Steel Corporation as you have

spoken of them here this afternoon been stated to the presidents of the subsidiary companies at these meetings by any member of the finance committee?

MR. DICKINSON: Objected to because it does not show what the meetings are, the times to which the witness's attention is called, also because it is irrelevant and incompetent.

THE WITNESS: As a rule at those meetings Judge Gary has talked to the presidents about the policies of the Corporation. His talk, if I might call it such, is governed by the particular matters that may be of interest at the time. It might be one time about labor. It might be at another time about selling. It might be at another time about some operating questions. Of course those differ as interests in different things differ.

Q. Did he ever at any of those meetings state the policy of the Corporation with regard to labor?

MR. DICKINSON: Objected to as irrelevant.

A. Oh, yes.

By MR. LINDABURY:

Q. What did he state it to be?

MR. DICKINSON: Objected to as irrelevant.

A. Well, I don't know; that covers several years. I cannot do more than say generally that it has been the idea of treating the laborer fairly and liberally, protecting him as far as possible in his work; sometimes it has been a question of whether his wages should be raised. In 1907 it was a question of whether they should be reduced. He ~~was opposed to~~ favored the last advance in wages.

By MR. LINDABURY:

Q. Now, with respect to the treatment of competitors, I suppose that has been spoken of at these meetings?

A. In a general way, yes.

Q. And what, in a general way, has been stated at those meetings to be the attitude of the Corporation, as represented by the Finance Committee?

MR. DICKINSON: This is objected to because it calls for an

interpretation of the witness as to what transpired without showing what was said, and calls for a conclusion, and also on the ground that the minutes of such meetings would be the best evidence of what occurred.

What meetings are these that are referred to?

MR. LINDABURY: The meetings of the presidents. The presidents had several meetings a year.

MR. DICKINSON: I just wanted to know what you are referring to.

MR. LINDABURY: The presidents' meetings, when they met the officers of the Steel Corporation. I am asking what was stated——

MR. DICKINSON: I just wanted to know what meetings you referred to.

By MR. LINDABURY:

Q. What was stated to them as the attitude of the Steel Corporation with respect to competitors?

A. Well, that would not come up at every meeting.

Q. I suppose not; but at any of them, Judge?

A. I can only characterize it as a policy of entire fairness with them, not resorting to any—I do not want to use the word "bulldozing," but I may say not resorting to any bulldozing or fraudulent methods; I suppose that would cover it. I do not mean by that that there was any criticism of the presidents for doing anything of that kind, but it could be stated in a general way that that was what the Corporation expected to do.

Following the panic of 1907 I think he talked several times to us about the co-operative movement.

Q. At the presidents' meetings?

A. Yes.

Q. Very well. Now, tell us what was said about that.

A. I cannot tell you.

Q. Do you not recall?

A. The general substance. As I have already told you, I thought sometimes the attitude of the Corporation was entirely too Christian.

Q. Judge, did you attend any of the Gary dinners?

A. Yes; I was at several of them.

Q. Do you remember attending the first one?

A. Yes.

Q. What was the situation then in the steel and iron trade?

A. It was just as blue as it could be.

Q. What made it so?

A. There was not anybody sure of the future. It looked as if the foundations of the business had all crumbled away, and as if we were in for several years of low prices and failures and the general bad effects that follow a panic. I had been through one or two of those in Pittsburgh, and I did not want to see another one.

Q. In what way had the steel industry come through previous panics?

A. Of course, what usually follows one of those depressions is the reduction in prices, everybody trying to get what little business there is, and then a reduction in wages, and then they borrow all the money they can out of the banks, and then the unfortunate manufacturer goes into bankruptcy or in the hands of the sheriff, and generally dies and goes to the cemetery. That was the history in 1873. We had failure after failure in Pittsburgh.

Q. You remember the panic of 1873, do you?

A. I do. I had just begun to practice law at that time, and they sent me around to try to collect claims.

Q. Did that panic result in many failures?

A. We had a long depression in Pittsburgh, running from 1873 to 1879; during which time you could not give away a rolling mill. Of course they were small mills in those days, and they were held by individual manufacturers rather than corporations; not that that would make any difference in the financial result.

Q. Did many of them become bankrupt?

A. Oh, yes; quite a number, but I know that was the general situation all over western Pennsylvania.

Q. When was the next panic or great financial depression?

A. We had some depression in 1893. That was sharp and sudden. As a rule, everybody quit working because there was no money, and the mills shut down. We had, at that time, I suppose, 500 men working in the parks digging roads which

were not needed, out of a charity fund that had been raised. The people in Pittsburgh raised $100,000 and Mr. Carnegie added $100,000 to it, and they used that money for that purpose. Men who had never done a day's manual labor were out there digging in the parks through snow and ice, trying to make enough money to live on. That lasted for some months.

Q. Was it attended with considerable distress?

A. That was attended with a great deal of distress while it lasted. There was not, as I remember it, so much distress among owners or manufacturers. There were very few failures. There was just a total cessation of business there for a little bit.

Then, of course, we had another one in 1903, which was at the time the Clairton went into the hands of a receiver. Then came the panic of 1907.

Q. Then there was the first Gary dinner. What was stated at that dinner to be the object of it?

MR. DICKINSON: This is objected to on the grounds already mentioned. Judge Gary himself, I believe, has stated what he said there.

By MR. LINDABURY:

Q. I do not expect as full a statement as was made by Judge Gary, but I should like the witness to tell, in his own way and briefly—he is always brief—what took place at that dinner; what was said by Judge Gary or anybody else as to the object of the meeting and as to what was done.

MR. DICKINSON: This is objected to unless the witness states what was said. Any conclusion of the witness is objected to as improper and incompetent.

By MR. LINDABURY:

Q. Now, Judge, you may answer.

A. I cannot say what was said at this late date. I doubt if I could have said it that night. I know, however, the substance of what was said.

Q. That is all that was intended to be asked of you, Judge.

MR. DICKINSON: This is objected to as incompetent.

THE WITNESS: The substance of it was that we knew from experience what happened in times after a panic and depres-

sion of this kind set in; that there was very little business in the country, probably, and would be for some while; that if everybody went out and tried to take what there was, it would reduce prices and necessarily affect the wages of the workmen. Worse than that, that the panic had caught a lot of customers and jobbers pretty well loaded up with goods at high prices, and if the prices of their various materials were pulled out from under them it would mean bankruptcy and trouble for a lot of jobbers and customers.

The thing to do was to keep our heads and go slow, and take what business naturally came along, and then let these jobbers work off their goods, and let the country store keeper, and so on, get rid of his stock, work it off normally and get ready for a new start. That was about the substance of it.

Q. Who said that?

A. Judge Gary.

Q. Anybody else? Other gentlemen talked, didn't they?

A. Yes; I think there were several other gentlemen talking on the same line, improving on that idea.

Q. Was there any agreement made at that meeting to fix prices?

A. There never was any agreement made to fix prices at that or any other meeting that I know of.

Q. Was there any agreement made to limit output?

A. No, sir.

Q. Or apportion output?

MR. DICKINSON: You are speaking now so far as you know, are you?

THE WITNESS: Surely; I intended that.

MR. DICKINSON: I wish you would state that, that will save some cross examination.

By MR. LINDABURY:

Q. You haven't been telling us anything you do not know, have you Judge?

A. I hope not.

MR. DICKINSON: You understood my suggestion, didn't you?

THE WITNESS: Yes, I was going to add to that, Judge Dickinson.

MR. DICKINSON: So as to prevent my cross examining you on something, so as to show the basis of it.

THE WITNESS: So far as I know there was no agreement made to maintain prices or restrict output; there was none made at any meeting at which I was present.

By MR. LINDABURY:

Q. Were you present at any subsequent Gary dinners?

A. Some of them; I do not think I was at all of them.

Q. Do you recall any that you missed?

A. They were pretty good dinners, and I generally liked to get there.

Q. Do you recall any that you missed?

A. I think there was one I missed; I don't remember which.

Q. You don't remember which it was?

A. No, sir.

Q. You do not recall missing more than one?

A. No, I don't think so.

Q. Your previous answer probably may be taken as applying to them all.

A. Wait a minute. I think I was at every so-called Gary dinner. I think I missed one or two of the Iron & Steel Institute dinners. I think I went to all the Gary dinners.

Q. Then I will ask my questions with regard to those dinners as a whole. Was there any agreement made at any of those dinners fixing prices or either limiting or apportioning output?

A. There was not.

MR. DICKINSON: Nobody ever said there was.

MR. REED: That is good safe testimony.

By MR. LINDABURY:

Q. Was there ever any agreement made at any of those meetings dividing territory?

MR. DICKINSON: You mean dinners now?

MR. LINDABURY: Yes, dinners.

THE WITNESS: No, sir.

By Mr. Lindabury:

Q. Was there any agreement of any kind entered into, either express or implied, for the control of prices or limitation of output or division of territory, or the apportionment of output?

Mr. Dickinson: So much of that is objected to as calls for an opinion of the witness as to what was implied, as a conclusion and a mere opinion of the witness based upon unproven facts of what transpired, and as incompetent and irrelevant.

Mr. Lindabury: Cannot we have your testimony that there was never anything of that kind, too?

Mr. Dickinson: Well, if you mean to say whether anybody got up there at that dinner and made an agreement that they were going to do any of these things, we have never pretended that there was any such thing. We do not suppose anybody would be foolish enough to do any such thing.

Mr. Lindabury: Will you answer the question, Judge?

The Witness: There was not.

By Mr. Lindabury:

Q. Was there anything of that kind done indirectly, by nod or wink or unexpressed understanding? In other words, was there any attempt to do a thing there indirectly that the parties were not willing to do or felt that they did not dare to do openly and above-board?

Mr. Dickinson: This is objected to because it calls for an interpretation of the witness as to the meaning of people's nodding and winking, and also an opinion of the witness as to undisclosed purposes, and the state of the minds of those who were at the dinner, and as incompetent and irrelevant.

Mr. Lindabury: You may answer.

The Witness: I did not see anybody either wink or nod, nor was there anything done, so far as I saw, that could be construed into anything of that sort, as an implied understanding. The whole talk was entirely different. It was to take what business naturaly came to you at decent prices, and not go out and raid the country and get everything you could into your own mill; to keep your head and keep cool, and this

thing would soon be over, and it would be better for everybody. Judge Gary at those dinners would exhort us like a Methodist preacher at a camp meeting.

MR. DICKINSON: Judge, are you a Methodist?

THE WITNESS: No, but I have been at camp meetings, if that is competent.

MR. DICKINSON: But a Methodist might object to your comparison.

MR. LINDABURY: But they are not here. Are you objecting on the ground that he is not an expert?

THE WITNESS: I will take that back anyhow. He would exhort us with great earnestness, and I think it had a good effect on the people that heard it.

By MR. LINDABURY:

Q. What was the burden of that exhortation?

A. As I said, to keep your head, to keep cool, take what business you naturally can, you cannot get any more, you cannot make business these kind of times; take what naturally comes to you at decent prices, keep your men working, and this thing will soon be over, and it will be over a good deal sooner than if you do the other way. I think it is fair to be said, and I think it ought to be said, that a good many of us did not agree with that policy of the Corporation at first, it seemed that we would be going slow, but we came around to it afterwards, and I believe today it is fair to Judge Gary to say that I think he saved thousands of men from bankruptcy in this country during the panic of 1907.

MR. DICKINSON: This is excepted to as irrelevant.

THE WITNESS: It is irrelevant. I perhaps ought not to say that.

By MR. LINDABURY:

Q. Well, why do you say that? What was the effect, so far as you observed it, of that movement which leads you to that opinion?

MR. DICKINSON: Objected to as irrelevant.

THE WITNESS: There were men all over the country loaded up with goods that they had bought at higher prices. They had to have time to work off their stock. If we had pursued

the old policy, and the policy that had been pursued in previous depressions, of going out and taking business, keeping your mill full regardless of what happened to the other fellow, naturally prices would have gone down, and these men would have been left with stocks that they would have to sell at a loss, a great loss. There were men at that dinner that first night who had large borrowings from banks, and if their business had been shot to pieces by their stronger competitors, they would have gone out of business. Some of them told me that.

MR. DICKINSON: That is excepted to as hearsay.

Q. Did you know enough of their situation to have an opinion whether that was a correct view to take?

A. I do not think a man will say that about himself unless it is correct. They may say the other thing.

Q. You are speaking now about the men who told you the situation?

A. Yes.

Q. How long did that depression last, Judge?

A. Well, it started in the early fall of 1907. We made a false start in 1909. It looked as if it was over, and then we slipped back again. I suppose it lasted four years.

Q. It was severest in 1908, I suppose?

A. 1908 was the worst year in my experience, around Pittsburgh.

Q. Were there any failures in Pittsburgh then, among the iron and steel men?

A. I do not know of anything of any importance. I do not remember any now.

Q. Judge, I show you Government Exhibits, Volume II, and call your attention to page 467. Before I call your attention to the contents of that page I will ask you another question with regard to the preceding subject, and that is whether or not at any of these so-called Gary dinners you saw anything done or heard anything said which indicated to you that anybody there intended to pursue any different course from that urged by Judge Gary.

MR. DICKINSON: That is objected to as irrelevant; it is also

objected to on the ground that it calls for an interpretation by the witness of acts and words that are not proven, and therefore the value of the witness' opinion can not be estimated.

By Mr. Lindabury:

Q. Let me add to that: My desire is to find out whether there was anything underhanded, secret or cabalistic so far as you saw in what was done at those meetings.

Mr. Dickinson: This is objected to because it calls for the opinion of the witness as to vague and indefinite acts, not proven, and he is not shown to be an expert on cabalistic things, and capable of forming an opinion on any such subject.

The Witness: There was nothing done; everybody behaved himself; there were no mysterious combinations in the corners of the rooms or anything of that kind going on. So far as anybody spoke, it was in hearty endorsement of Judge Gary's views, and there was no dissent from that so far as I saw or heard.

By Mr. Lindabury:

Q. Now, Judge, on the page I referred to of Volume II of Government Exhibits is the minute of the meeting of the directors of the Carnegie Steel Company held December 23, 1901; you were at that time, I believe, a member of the board?

A. Yes.

Q. I will read you the minute:

"In regard to the price of pig iron for the first quarter of 1902, on which to base prices between departments, after some discussion, in which it developed that the Valley price for pig iron would be advanced 50c. per ton, and that coke would increase 25c. per ton—it was moved by Mr. Blackburn, seconded by Mr. Clemson, that the price of pig iron for the first quarter of 1902 be fixed at $15.00. The motion was carried, the vote being unanimous."

Can you tell what is meant by that phrase "fixed at $15.00?"

A. Exactly what it says there, in order to base prices between departments; in other words, in order to fix the cost as between one department and another. They would state the

price of pig iron to be $15 and then that showed what the cost was in the further processes between that and the finished steel; it is simply a department bookkeeping proposition.

Q. This is with respect to your own company?

A. Yes.

Q. A matter of fixing prices in your own company?

A. Yes.

Q. Judge, turn to page 472 of the Carnegie minutes, April 8, 1902; under the title of "Hoops" (reading):

"Mr. Corey: Mr. Bope reports that, at the meeting of the Hoop Makers yesterday, both Pittsburgh and Sharon insisted upon an immediate advance in the price of hoops, which we opposed, but finally compromised," and so forth.

Have you consulted the original minutes to find out whether you were present or not; have you any recollection, in the first place, of that being said at the meeting at which you were present?

A. I have no recollection of that being said although the original minutes seem to indicate that I was present during a portion of the meeting.

Q. The next meeting is a meeting of May 5, 1902; you have it before you?

A. Yes, sir.

Q. And it is entitled "Armor Plate Plant in Japan." I think you have read that minute, haven't you?

A. Yes.

Q. Do you remember anything about that matter?

A. I do not.

Q. Do you remember whether you were present or where you were?

A. I rather think I was. That is my recollection from looking over the minute; that is, the minutes seem to show I was there, but I do not remember that. It was something connected with international armor. I did not notice at the time it was stated. I was having troubles of my own at that time. An ore train had gone through the largest trestle on the road, 135 feet high, and we were trying to get it repaired. I was just talking about that, and that was on my mind; I was not thinking of armor plate in Japan.

Q. Anyhow, you are not able to recall anything about the business?

A. I have no recollection of it at all.

Q. Did you ever hear of an armor pool such as is mentioned there?

A. No, sir.

Q. Or any other armor pool?

A. No, sir; except in the newspapers.

Q. I meant to say in connection with the business of the company?

A. No, sir.

Q. The next meeting is of June 3, 1902. It is stated there that the price for rails for next year was fixed last week at $28. Have you got that, Judge, before you?

A. Yes.

Q. Do you remember by whom that was fixed; what the meaning of that phrase is—"was fixed at $28"?

A. I would understand that to mean fixed by the Corporation.

Q. That occurs elsewhere in the minutes?

A. Yes.

Q. Is it your understanding that that is the meaning of the phrase wherever it occurs?

A. I would consider it to be.

Q. Have you any independent recollection of Mr. Bope's speech on that subject?

A. No, sir.

Q. Judge, turn to page 475; I call your attention to a meeting of August 26, 1902. Do you remember whether you were present at that meeting or not?

A. No; I was not. I was in the West, I think.

(Whereupon an adjournment was taken until tomorrow, June 18, 1913, at 10:30 o'clock a. m.)

SEVENTY-NINTH DAY.

EMPIRE BUILDING,
71 BROADWAY, NEW YORK CITY,

WEDNESDAY, JUNE 18, 1913.

Before SPECIAL EXAMINER JOHN ARTHUR BROWN.

Present on behalf of the United States, MR. DICKINSON and MR. COLTON.

Present on behalf of the Defendants, MR. LINDABURY, MR. SEVERANCE, MR. BOLLING and MR. REED.

JAMES H. REED,

the witness under examination at the taking of the adjournment, resumed the stand.

DIRECT EXAMINATION (Continued),

By MR. LINDABURY:

Q. At the time of adjournment yesterday I was asking you about a meeting of the board of directors of the Carnegie Steel Company held August 26, 1902. I will ask you to refer to the original minutes of that meeting and state who was present, as recorded in the minutes.

MR. COLTON: What page of the exhibit?

MR. LINDABURY: Do not answer, Judge. The page in the exhibits is 475 of Volume II. Now you may answer.

THE WITNESS: The minutes show Messrs. Bope, Morrison and Kerr of the directors, and Mr. McCague and Mr. Campbell, who were there as proxies for directors. The custom of that company was in the absence of directors they had standing proxies who came to the meeting, but did not vote. They were there to represent their different departments if necessary.

By MR. LINDABURY:

Q. Is it a fact, as you have stated, that Mr. Campbell was there as proxy?

A. My impression is that Mr. Campbell was a proxy for some director. He had no vote.

MR. DICKINSON: Is the Judge now speaking from what the minutes show, or outside?

MR. LINDABURY: From recollection.

THE WITNESS: I am stating from recollection who were proxies, but I am speaking from the minutes as to who were there.

MR. LINDABURY: I will get the minute correct.

By MR. LINDABURY:

Q. Does the minute show anyone there as proxy?

A. It shows Mr. McCague as proxy for Mr. Singer.

Q. What is the statement as to Mr. Campbell?

A. Assistant secretary.

Q. The minute does not state whether he was there as proxy for anybody or not?

A. No, sir.

Q. Do you recall, independent of the minute, that Mr. Campbell was there as proxy for anybody?

A. I think he was the standing proxy for Mr. Blackburn, who was secretary of the company at that time; but, as I have explained to you, a proxy had no vote or authority in the meeting.

MR. LINDABURY: That already appears, I think, in the testimony of some other witness.

THE WITNESS: Do you want those absent?

By MR. LINDABURY:

Q. Do the minutes show who were absent?

A. They do; Messrs. Corey, Schwab, Gary, Clemson, Reed, Singer, Blackburn and McCausland absent.

Q. How many does that make of the absentees?

A. Eight.

Q. Eight absentees and how many directors present?

A. Three directors and two others.

MR. DICKINSON: Is that August 26?

THE WITNESS: August 26, 1902.

By Mr. Lindabury:

Q. On page 476 of Volume II of Exhibits are the minutes of a meeting of September 23rd. Do you remember whether you were present at that meeting or not? If you do not you may refer to the minutes and refresh your recollection.

A. I do not think I was. I think I was in the West at that time, somewhere around Vancouver. (Referring to original minutes.) No, sir; I was not there.

Q. At the meeting of August 26, 1902, Mr. Bope is recorded as having remarked: "Our selling to the independent mills at high prices ought to react to the benefit of the Tin Plate and Sheet Steel Companies later, because if we can fill these other people up at high prices, our Companies can cut prices and take the orders"; and at the meeting of September 23rd, 1902, Mr. Bope is recorded as having said: "The Tin Plate Company are covered by contracts up to the 1st of December. At that time they anticipate making a heavy cut in prices, which they think will put 90 per cent. of their competitors out of business."

Assuming that Mr. Bope made the remarks there recorded, can you tell me whether or not the sentiments thus expressed represented the policies of either the Carnegie or the United States Steel Corporation?

Mr. Dickinson: I object to that as incompetent.

The Witness: They did not, as I understood them. The first statement you have quoted is a mathematical possibility, of course, but such a thing never happened.

By Mr. Lindabury:

Q. And did the latter ever happen, that is, did the Tin Plate Company in December or about that time, make a heavy cut in prices?

A. I think not; that is my recollection.

Q. Did they ever put 90 per cent. of their competitors out of business, or any per cent. of them, so far as you ever heard?

A. So far as I ever heard they did not.

Q. Did they ever attempt to load up their competitors with steel products at prices which were, I will say, artificially high either with a view to crippling them or otherwise?

MR. DICKINSON: I object to this, because it has not been shown that the witness was in position to know the acts or practices of the Tin Plate Company with respect to the matters referred to, and this is also objected to on the ground that his opinion as to their policies as expressed by their acts is incompetent.

THE WITNESS: They did not, not so far as I know.

Q. Judge, I did not intend to ask for your opinion as to the policies of the United States Steel Corporation and the Carnegie Company, but your knowledge; what was it you intended to testify, to knowledge or mere opinion?

MR. DICKINSON: This is objected to because it does not define matters in respect of which the witness is asked to indicate that his answers were based upon knowledge.

MR. LINDABURY: I like your objections, Judge, because they always indicate to me the importance of my inquiry.

THE WITNESS: Both. I have given my opinion as to the policy of the Corporation and as to my knowledge; from an examination of the records, I find that nothing of the kind was done by the Tin Plate Company.

MR. DICKINSON: That is objected to because it is hearsay and speaking from records, and the records are the best evidence.

By MR. LINDABURY:

Q. That is, as to what the Tin Plate Company did?

A. Yes, sir.

Q. But you had knowledge, had you not, of what were the actual policies of the Steel Corporation?

MR. DICKINSON: Objected to as leading.

THE WITNESS: I had.

By MR. LINDABURY:

Q. Judge, I call your attention to Volume II of Government Exhibits, page 477. There is there recorded among the minutes of November 4, 1902, a remark by Mr. Corey as follows:

"They cannot say that we forced the price up as we did not buy any iron; but I do not think we should force them to pay more than the market price for billets, except perhaps

in the case of Union Steel Company. I think it would be a good plan to hold them to the contracts if it can be done. I am strongly in favor of pushing Union Steel Company as hard as we can. There is nothing we can do to smooth matters over with them as they are determined to do all they can against us. For the others I think $28.00 for billets would be high enough.

"Mr. Blackburn: Considering that our scale contract customers have always had the benefit of low Pig Iron prices, and have usually secured their billets below the ruling market rates, I think they should all live up to their contracts and pay the higher price now.

"Judge Reed: Why not put out $22.25 and let them ask for a concession before we grant it. This may help us in the settlement of some controversies we have with the Union Steel Company, and it will be complying with the terms of the contracts. If reductions are finally made it should be with the distinct understanding that the contracts are not affected by such action, as the waiver of any of the conditions of the contracts would be to destroy their effect."

What does this reference to the Union Steel Company and its attitude refer to?

A. The Carnegie Company had a contract with the Union Steel Company to sell them pig iron and some billets, I think, and there was some controversy about the price and the deliveries and one thing and another. It was not a question between the two companies as competitors, but a question between the one as a seller and the other as a buyer, and the price was based on the average price of pig iron. It is so long ago I do not remember what the controversies were.

Q. I do not care about it only as to what the subject was.

A. That was the subject.

Q. Please turn to page 491 of the same volume. There is there the minutes of a meeting of May 11, 1903. Mr. Corey says:

"I should like to have the views of the Board as to the advisability of buying iron for the third quarter. There is understood to be about 65,000 tons in the market for the third

quarter's delivery, and if we buy at this time it will be largely for the purpose of preventing the furnace people from offering it around, and thus demoralizing the market. If we could buy up all that is to be had it would undoubtedly do a great deal of (sic) strengthen the situation. The price would be around $18.00 Valley.

"On discussion it was agreed that iron for the third quarter should be purchased on assurances from the furnace people that 65,000 tons was all the available iron for that quarter and that no more would be put on the market."

I believe you were present at that meeting, were you not? You may look at the original minute if you choose.

A. I expect I was.

MR. DICKINSON: Suppose you look at the minute and see.

MR. LINDABURY: I have looked at the minute and find he was recorded as present, unless the other side insist on him looking; I state that to save time.

THE WITNESS: Yes, I was there.

By MR. LINDABURY:

Q. I want to ask you about that purchase and about the policy that that indicated. Was, in the first place, a purchase of 65,000 tons an unusual purchase as to quantity?

A. No, sir. The Carnegie Company at that time did not make all the pig iron it could use. It had to go out and buy from time to time. That was not an unusual purchase.

Q. Did the Carnegie Company need this ore at the time?

A. Pig iron, you mean?

Q. I mean pig iron.

A. I think it did; that is, they needed it as soon as it could be delivered.

Q. And was the price stated here above the fair market price at the time?

A. I would not think it was.

MR. DICKINSON: We object to any mere guess.

By MR. LINDABURY:

Q. Is that a mere guess?

A. No, it is not exactly a guess. I cannot tell you today what the current price of pig iron was for any day or month in

1903, but judging from the general prices that prevailed for pig iron, that was a reasonable price for it.

Q. Did the Carnegie Company at any time purchase pig iron beyond its needs for the purpose of sustaining the market, or for any other ulterior purpose?

MR. DICKINSON: Objected to as incompetent.

THE WITNESS: No, sir, I do not think you can put that construction on it. They never bought pig iron they did not need.

By MR. LINDABURY:

Q. Did they ever buy at a price in excess of its fair market value with a view of sustaining the market or affecting their sliding scale contracts, or for any other ulterior purpose?

MR. DICKINSON: That is objected to because it calls for an opinion of the witness as to ulterior purposes, not stating what the purposes were or what the facts were involved in them, or the opinion upon a state of facts not proven but assumed by the witness and answered upon his assumption, and it is objected to also because the witness is not qualified as competent to answer that question.

By MR. LINDABURY:

Q. You were at this time chairman of the board, were you not, Judge?

A. I do not know—no, I was not.

Q. When did you become chairman of the board. I see the date is a little earlier than I thought.

A. After Mr. Corey came to New York.

Q. Which was the autumn of that same year, was it not?

A. I think it was, yes.

Q. Now, Judge, you may answer the question. Do you recall it?

A. Yes.

I do not remember any case in which they paid more than the fair market value. They were interested in maintaining a stable price for commodities. The policy of the Carnegie Company and, you might say, of the Steel Corporation in

the purchase of pig iron was to maintain as nearly as possible an equilibrium or stable price. Instead of beating down the manufacturer of pig iron, who frequently accumulated a large stock that he could not sell, and getting it as cheaply as they could from him, they paid what they considered a fair price. It was always sold by agreement with the manufacturer of pig iron.

Q. What was the financial condition of the country at this time?

A. My recollection is that it was not very good; business was depressed.

MR. DICKINSON: What year are you speaking of—1903?

MR. LINDABURY: 1903.

THE WITNESS: I think the Clairton plant had gone into the hands of receivers in the early part of 1903.

By MR. LINDABURY:

Q. Business conditions generally were very seriously disturbed, were they not?

A. They were depressed, yes.

Q. What was the condition of the pig iron people, the Valley people, that are spoken of here?

A. Well, I remember it was depressed, too; that is, there was very little market.

Q. What was the purpose of the inquiry, in which I rather think you joined, as to whether this 65,000 tons was all there was for sale?

MR. DICKINSON: Objected to as incompetent and self serving.

By MR. LINDABURY:

Q. How did that interest you?

A. Well, I suppose that if there had been more the Carnegie Company would have been glad to buy more. I cannot remember now.

Q. You cannot recall?

A. No. I think, in fairness, I ought to add to that, in answer to the questions on that subject, that they were interested in maintaining stable prices because, for one reason,

they had a number of scale contracts, so that it was not to the interest of the company or anybody else, even the people with whom they had scale contracts, to drive prices down; and as pig iron has always been a sort of basis of prices in this business, if you put that down below a reasonable living price for the manufacturer of pig iron you brought the whole structure down. If there is anything wrong in that, then it was wrong.

Q. Without regard, Judge, to the views or expressions of individuals, did the Carnegie Company, as a matter of fact, ever purchase pig iron at a price beyond the fair market price, for the purpose of favorably affecting its scale contracts?

MR. DICKINSON: Excepted to as incompetent, not specifying any time, and the witness not having qualified himself to speak of the matter of prices.

THE WITNESS: I never knew of any case of the kind, and if they had tried to do it they would have found a lot of purchasers under the scale contracts entirely willing to fight with them on that proposition.

MR. DICKINSON: I except to the latter part of the answer as argumentative.

By MR. LINDABURY:

Q. Did the Carnegie Company, so far as you know, ever have a complaint from its customers having these scale contracts of unfair prices in that respect?

A. I do not remember any. They were always arguing about something under those contracts.

Q. You never heard them argue about that?

A. No; I never heard them argue about that. They were generally arguing because they did not make deliveries to suit them.

Q. That is, they did not get them fast enough or large enough?

A. Yes.

Q. Judge, I was about to call your attention to page 494, where there is a minute with regard to the price of old rails.

This was a meeting of December 28, 1903. Are old rails used for any of the purposes that pig iron is used for?

A. They can be used with scrap in the manufacture of steel.

Q. I will not read the minute to you, as it is rather long, but I will ask you whether or not your answer with regard to the purchase of pig iron applies to the practices of the Steel Corporation with regard to the purchase of old rails and such things?

A. Yes, sir.

MR. DICKINSON: The same objection to that. Was Judge Reed at this meeting of December 28th?

MR. LINDABURY: Yes.

THE WITNESS: Yes, I was there.

By MR. LINDABURY:

Q. Page 498, there is there recorded a minute of the meeting of the Board of June 27, 1904, at which you were present?

A. Yes.

Q. The printed minute does not show you were present, but the original does and I have seen it. There Mr. Bope said as follows:

"We have closed up the Oliver Iron & Steel Company contract on the basis of 11 tons of coke for one ton of billets, the old scale having been increased by 25 cents per ton. This removes the possibility of their going into the manufacture of steel, by taking the coke out of the way, and, while the price of steel is not high at the present Pig Iron rate, the contract will be a good one over a period of years."

Was the Oliver Company engaged in the manufacture of steel at the time?

A. The Oliver Company, as I remember, was engaged in the manufacture of certain lines of steel products, and they were buyers of billets. They had a large coke production which came to them as lessees of a piece of what is called the Thaw estate property in the Connellsville region. They didn't have much use for the coke, hadn't any use for the coke, and what that means is that the company bought their coke and sold them billets on some sort of trade.

Q. Were they competitors of the Carnegie Company?

A. I do not remember whether they were or not on special products; they never had been exactly competitors; they did not sell a heavy class of tonnage.

Q. Was this contract entered into with any idea of suppressing their competition, either existing or threatened?

MR. DICKINSON: That is objected to. The contract itself is the best evidence of what it was.

MR. LINDABURY: We haven't that.

MR. DICKINSON: And the minutes are the best evidence of what transpired at this meeting, and we object to an opinion expressed by the witness on the contract or the purposes of it, as incompetent and irrelevant.

MR. LINDABURY: I am not asking for the witness's opinion, but for facts, and I deny that this minute is the best evidence of what took place.

THE WITNESS: It increased the facilities of both companies; it gave to the Oliver people steel, and gave to the Carnegie Company coke.

By MR. LINDABURY:

Q. It was therefore mutually advantageous?

A. Yes.

Q. On page 510 there is a minute of a meeting of March 19, 1906, at which meeting Mr. Bope is recorded as stating:

"The General Superintendent of the Pittsburgh & Lake Erie told us the other day that after testing Open Hearth rails furnished them by the Tennessee Coal & Iron Company and our Bessemer rails, they have decided that Open Hearth are twice as good as Bessemer rails. He wanted to know when we would be able to make Open Hearth rails, and said they would be willing to pay a little more for Open-Hearth than for Bessemer."

Do you know enough about the quality of rails or the rail business to know whether or not that statement is borne out by the facts, as to the difference in quality?

A. That they are twice as good?

Q. Yes; what do you say?

MR. DICKINSON: That is objected to as incompetent.

THE WITNESS: You apportion my expert knowledge pretty far, but I would think that the statement that Open Hearth is twice as good as Bessemer is a rhetorical exaggeration; it is not so.

MR. DICKINSON: If you will permit I will call his attention to the fact that the statement is that,

"The general superintendent of the Pittsburgh & Lake Erie told us the other day that after testing open-hearth rails furnished them by the Tennessee Coal & Iron Company and our Bessemer rails, they have decided that open-hearth are twice as good as Bessemer rails."

Do you question his statement, or just question whether or not their decision is correct?

THE WITNESS: My answer apparently is that their decision was not correct, where they say they were twice as good.

MR. DICKINSON: That is to say, you differ in conclusion from the opinion reached there?

THE WITNESS: Yes.

MR. DICKINSON: We object to the difference of opinion on the part of the witness, it not being shown that he is an expert.

THE WITNESS: I do not undertake to say that Mr. Bope did not say that, or that the general superintendent did not tell Mr. Bope that. I said that what either of them said was a rhetorical exaggeration.

MR. LINDABURY: It hardly comports with the statement that they would pay so little more for open-hearth.

By MR. LINDABURY:

Q. Do you recall the object of this statement by Mr. Bope and what the question before the board was?

A. The question before the board was to try to persuade the finance committee to let us build some more open-hearth furnaces.

Q. This was Mr. Bope's way of getting at it, was it?

A. That is one way. In other words, the subject was up and he was telling us everything he could about it.

Q. And do you know whether that was followed up by an application to the finance committee?

A. Yes.

Q. I think there is something about that on page 513, under date of October 15, 1906:

"Mr. Dinkey: I can report to the Board a very successful trip to New York last week. We succeeded in having the Corporation authorize 2 blast furnaces, 18 Open Hearth and a 16" mill for Duquesne, and moving a mill from Monessen to Duquesne, about nine million dollars. They went over very carefully the improvements we have suggested for Ohio, namely, 2 blast furnaces, 12 Open Hearth, a blooming mill and 10 bar mills, but have set this proposition aside; it may be taken up again in two or three months."

Were the twelve open-hearth furnaces also recommended for Ohio?

A. I think they were later, yes.

Q. No, I mean recommended by your board.

A. Yes, sir.

Q. There is a minute I think on that subject under date of December 10th found on page 515.

A. Yes.

Q. Mr. Dinkey there informs the board—he says:

"I am very glad to tell the Board we have secured permission to build two more blast furnaces and twelve Open Hearth at Ohio."

That made within two or three months how many new open-hearth furnaces authorized?

A. Thirty.

Q. Did you have some before that?

A. Must have had.

Q. Have you a general recollection?

A. No, I could not tell from recollection how many they had. I know they had some at Homestead and Duquesne.

Q. Was there a growing demand for open-hearth products?

A. Yes.

Q. Particularly rails?

A. Yes.

Q. At this time?

A. Yes.

Q. And did it continue?

A. Yes.

Q. Do you remember whether or not the subsidiaries of the Steel Corporation had sufficient open-hearth furnaces to keep up from time to time with the demand for open-hearth products?

A. I think they had enough to keep up with the demand for open-hearth rails. They had open-hearth tonnage to sell outside of the demand for rails.

MR. DICKINSON: To what period does this refer?

THE WITNESS: 1906, I suppose Mr. Lindabury is asking me.

By MR. LINDABURY:

Q. I was not confining it to 1906; we will say 1906 and 1907.

MR. DICKINSON: He has not said 1907. He said 1906.

By MR. LINDABURY:

Q. Was your answer as to 1906, Judge?

A. My answer was at the time we were speaking of, yes, in 1906.

Q. How was it in 1907?

A. I do not really remember, Mr. Lindabury. I assume the same, that there were open-hearth products to sell in addition to what the railroads took.

MR. DICKINSON: We object to the assumption of the witness as to the fact that he states he does not remember, as being incompetent.

By MR. LINDABURY:

Q. What do I understand by your statement that you do not remember; either that you do not remember the figures or that you do not remember anything on the subject?

A. I do not remember the figures.

Q. In what form did the Corporation sell?

A. It is not my business to charge myself with figures of that kind. I cannot remember figures any more than thirty days, so I do not want to be put in that position by either

side that I am trying to state figures. I am only stating general things that are in my mind. I know that there was a great deal of talk on the part of railroad companies about a desire to have open-hearth rails and their becoming reluctance to pay any more for them—natural reluctance, I mean to say, to pay any more for them than they did for the Bessemer rails, and while their engineers all said they were better, the people that had to put up the money could not see their way clear to put up the money for them. Consequently there was more open-hearth steel manufactured than the railroads would take at that time. I have got that in mind as a general proposition. I cannot give figures or dates.

Q. Well, Judge, in what form did the Corporation or its subsidiaries sell this excess open-hearth material?

A. I suppose it went into many forms, it went into structural——

Q. (Interposing) No, I do not mean how it was used, but in what form was it when they sold it? I mean was it in semi-finished form?

A. In semi-finished form, yes, except that that went into structural material, beams, and so forth. They sold some for use in buildings.

Q. Do you know whether or not, either in 1906 or 1907, fifty per cent. of the Steel Corporation's open-hearth steel went into rails?

A. I can only give you that from the records as I have found them. I have no other means of knowing. I would say that fifty per cent. did not go——

MR. DICKINSON: (Interposing) I object to his stating what the records show and call for the production of the records.

By MR. LINDABURY:

Q. Are you aware of the fact that the Steel Corporation sold in semi-finished form in the year 1907, two or three times as much open hearth steel as it manufactured into rails?

MR. DICKINSON: That is objected to so far as the witness

bases his answer upon an examination of records which are not produced.

MR. LINDABURY: We will give you the records so you can save that exception.

THE WITNESS: The records show that, yes, sir.

By MR. LINDABURY:

Q. Judge, I will ask you to turn to the original minutes of the directors of the Carnegie Steel Company under date of June 24th, 1907. On page 516 of Volume II of Government Exhibits is recorded a part of the minutes of that meeting. I will ask you to begin and read from where the Government left off, in about the tenth or twelfth line on page 517.

MR. DICKINSON: I want to make a statement on the record. I think it is proper there. When we put in these exhibits and made excerpts it was with the understanding that counsel on either side could put in any more of the same minutes that they regarded as pertinent or relevant on the same subject, subject, of course, to exception, but I do not suppose counsel meant to say we excerpted this with a view of excluding anything, because the understanding was that it could come in that way.

MR. LINDABURY: My recollection accords entirely with Judge Dickinson's statement, and I am now simply intending to put in some minutes which are connected with those which the Government has put in, and are necessary to their full understanding, as we conceive, and our doing so is not meant as a criticism or reflection upon the course of the Government. I withdraw the last question, as I find my notes are not written in the clearest handwriting, and I got the date wrong; the meeting of December 30th, 1907, is the one I meant to call attention to.

THE WITNESS: That is not here at all.

MR. LINDABURY: The Government put in no minutes on that date, but there is a minute of the meeting of December 30th, as to the same subject, and naturally connects with it, and I will ask you to read that, Judge.

MR. DICKINSON: Is that in regard to a subject in regard to which we have put in something?

MR. LINDABURY: Yes, although not at the same meeting.

MR. DICKINSON: What is the subject?

MR. LINDABURY: That the situation is unchanged, and about the business, the fluctuations of prices and so forth. Shall I read it?

MR. DICKINSON: Yes.

MR. LINDABURY: This is by Mr. Benner——

MR. DICKINSON: You are putting that in evidence?

MR. LINDABURY: Yes.

MR. DICKINSON: Before you begin I will say that we except to this because it is a different minute from that put in by the Government; also on the ground that the minutes introduced by the Government were introduced as statements against interest, and these are excepted to as self-serving statements and as incompetent.

MR. LINDABURY: To that I will answer that this and succeeding minutes that I put in are, as we conceive, all connected together and relate to the same subject, and are part of the general story.

THE WITNESS (Reading):

"Mr. Benner: The general situation is unchanged. I think we will wind up this month with an ingot tonnage of 250,000 tons, or about 33 per cent. of our gross output. We hope to do as well, at least, in the month of January. The chances are that plates and shapes will fall behind, but we think that sheet bars will make up in tonnage lost in these two lines. We expect a pretty fair business in sheet bars the first quarter. The competition in light rails is very severe, due to the fact that the re-rolling mills have increased their capacity in the past year or so, and are practically able to-day to supply the demand for light rails in this country; and they have cut our prices considerably. We are holding to the full price, and this practically means for the present we are out of the light rail market. In other lines there is considerable competition, but we cannot find that any prices are being cut. Our policy is not to try to take any customers from any one else, but to endeavor to keep them from taking any of ours; and so far they have not taken any of our business."

By Mr. Lindabury:

Q. At the request of Mr. Colton I will ask the witness to read the names of the directors present at this meeting.

A. (Reading) "Messrs. Reed (chairman), Singer, Blackburn, Morrison, Kerr and McCausland; also A. R. Hunt, Samuel A. Benner and A. B. Harper (secretary to the board). Messrs. Dinkey, Bope, Clemson, Corey, Gary and Dickson absent."

Q. Now, Judge, there was a meeting as appears by the minutes of the directors of the Carnegie Company held on January 6, 1908, at which there were present yourself, Mr. Dinkey, Mr. Bope, Mr. Singer, Mr. Morrison, Mr. Clemson, Mr. Kerr and Mr. McCausland; also James J. Campbell and A. B. Harper (secretary to the board). Absent, Messrs. Blackburn, Corey, Gary and Dickson.

At that meeting Mr. Bope is recorded as having made a report which I will ask you to read in part as indicated.

A. (Reading) "Our order mails this morning started in fairly well, in the Bar Division particularly. The whole situation, however, is complicated by a desire on the part of the trade to know what our policy is going to be as to prices. While it is too soon to tell what the sentimental effect of the reduction in sheet and tin mill products will be, undoubtedly it will have some effect. I think we can maintain prices, but it will be simply by bull strength and not from any good economic reasons, and we will have to give some sort of a guarantee against decline if we sell anything. Some of our manufacturing friends are beginning to get very restive because in some lines, such as iron light rails and hard steel products of various kinds, prices are off. Our agents were here last week and were almost unanimous in the feeling that the time is not ripe for us to reduce prices. They seemed to think that if anything is done from the middle of February to the first of March would be about the right time to do it, yet no one was willing to fix that as the date or even say it would be necessary then. The trade is mixed in their own minds. Manufacturers who bought at high prices do not, of course, want to see any reduction until they can unload, neither do the large jobbers who have considerable stock. On

the other hand, the feeling on the part of a good many of the trade is that a buying movement will never start until we do drop back a little. I have never seen the situation quite so mixed from a price standpoint as it is to-day. Nobody really knows his own mind as to what is the right thing to do. The Corporation counsels patience, and I guess that is what we will have to use for the next two or three weeks anyhow."

MR. LINDABURY: At the request of Mr. Colton, I will ask the witness to read the succeeding paragraph.

THE WITNESS: (Reading) The feeling, however, is distinctly more optimistic than it was even a few weeks ago. Everybody feels there is going to be business, and everybody wants to do business. The Pittsburgh Steel Company is a fair illustration. Their traveling men are waiting to get out, but they do not know what instructions to give them, whether there is going to be a reduction in prices or whether they will have to guarantee them. I think possibly by the end of this month the situation will be clear enough to say whether or not we must make a reduction. Until then we will have to be patient and accept the business which comes to us on actual contracts, and on what we do sell we will have to say that we cannot give any written guarantee against a decline, but if there is any reduction that works a hardship on the buyer we will stand by them. We cannot take business unless we do give some assurance of this kind. If there could be a definite pronouncement made as to what we are going to be able to do, if anybody is able to make such an announcement, it would start a small buying movement, but everybody is reluctant to buy in the face of what looks like a reduction in prices later."

MR. LINDABURY: That ends what Mr. Colton asked to have read, but I will now ask the witness to read further on my own account.

THE WITNESS: (Reading) "Mr. Singer: With pig iron going down, it seems to me it will be absolutely necessary to make some reduction in finished prices before a buying movement will start."

"Mr. Bope: We heard from Chicago to-day, but have not

had time to confirm it, that Republic is offering foundry iron in the Birmingham District at $12.85, which is equivalent to about $16.50 Pittsburgh."

"Mr. Dinkey: I understood they had fixed the price down there at $13.00. It may be due to a difference of 15c. in freight, some one using the wrong rate to the delivery point and making the price appear as equivalent to $12.85 Birmingham. I do not believe they have made a cut."

"Mr. Bope: I know that they are getting very restless under the conditions, especially on account of the competition of the Wisconsin Steel Company, Inland and the iron manufacturers. They have a little mill at Moline, Ill, where they have been taking care of the agricultural trade, and Wisconsin went in and took practically all of this business from them."

By Mr. Lindabury:

Q. Judge Reed, the Government has put in a part of the minutes of a meeting of the Board of Directors of the Carnegie Company under date of January 20th, 1908, and I will ask you to turn to the original minutes and read the part which is between the two portions that the Government put in, and also the part that precedes the first portion, so as to make the connection as follows:

"Mr. Bope: I have never seen the situation so mixed or so hard to size up as it is to-day, although some of our agents report conditions better last week than for three or four months."

Now follows what the Government put in:

"The Steel & Wire Company last week met the issue squarely by deciding to reaffirm prices, and in view of the conditions in the wire industry, I believe they will be able to carry that policy through."

That ends what the Government put in, and I will now read what follows:

"The Sheet & Tin Plate Company, while they have received some benefit from the reduction made, are not satis-

fied with results obtained. They did not reach the point where they could start a buying movement by that reduction, and I have heard this morning that tin plate manufacturers are now talking about another reduction, which I believe will have a bad effect. If a reduction is contemplated it should be made at once, and then give the buying public to understand that prices are down to bed rock, which will help establish confidence even if there is not much business.

"Our specifications for sheet bars and billets are coming in very nicely, but there is no change on standard rails. We are losing nothing in the car situation. The car companies will practically all be out of orders by the end of February, and with the very large number of idle cars on the railroads to-day they are not likely to buy, even at a reduced price, until there are indications that this idle capacity can be put into service.

"The Bar situation is a rather serious one to my mind. Iron bars are selling at 1.35c. Pittsburgh basis, which is $5 per ton below the price of steel. A good many people, even though they do not care for iron, will use it where there is such a differential as this. They can use it in bolts, nuts and other things. We are still holding our price at 1.60, but are not getting very much tonnage outside of what is coming in on contract. Even under these circumstances our specifications against contracts are improving, possibly due to the fact that so many of our customers changed their machinery during the past few years to use steel, and do not now want to change back to iron fearing that we may eventually reduce the price of steel and thus compel them to make a double change, which would be expensive.

"Billets are very strong and cannot be obtained under $28.00 Pittsburgh, and yet pig iron has sold during the week at $16.50 in the Valley; and how we can maintain a differential between that and $28 for billets I do not know.

"Further, if the price of sheets is again reduced it will immediately put the independents at a very great disadvantage. They cannot afford to pay $29 for sheet bars and stand very much more reduction in their finished material; so the situation is decidely a mixed one.

"Among the conflicting elements are low prices made by Jones & Laughlin on spikes which indirectly affects the price of billets. For instance, Dilworth, Porter & Company tell us about this competition and want us to make a special price on billets.

"One of the large bar users also told me he had received a quotation of 1.30 on steel bars, from a big steel manufacturer, which he promised to get in writing for me, but as yet I have not had any confirmation of this quotation."

MR. LINDABURY: The Government has put in a part of the minutes of April 20, 1908, and I will ask Judge Reed to refer to the original minutes and read the portion following to connect with what the Government has put in.

MR. COLTON: The same objection in every case as to this reading.

THE WITNESS: Immediately following the figures "1.35" is this:

"Looking at it one way, a reduction in price has stimulated business. On the other hand, the reduction in the price of pig iron has curtailed instead of increased buying.

"In structural there are indications of some buying, but prices for fabricated work, which is the second weak feature in the market, have been cut to a terrible figure. The Corn Products Building, although some of the columns will be cast iron, was taken at $44 delivered Chicago for the work fabricated, but, as I stated, the material has all been sold on the basis of 1.60c. structural Chicago. There are a number of other large structures coming up in which we may reasonably expect to meet the same kind of competition. This is not, however, as serious as the bar situation, because demoralization in structural would be confined to a few places where prominent buildings are being erected, while in bars it means all over the country. We are also running into increased competition now in iron for axles, bolts and rivets, because of the fact that it can be bought anywhere from $3 to $5 per ton below steel.

"This is the situation as it actually is to-day; it is a very mixed one all through."

Mr. Lindabury: At the request of Mr. Colton I will read the remainder of Mr. Bope's statement, immediately following where I ceased reading:

"There is going to be a falling off in the billet requirements of the Steel & Wire Company next month, but Mr. Farrell tells us there will be 30,000 tons of export sheet bars coming in for May and June which will take up that slack. The Sheet & Tin Plate Company is doing very well now, and taking out a pretty good tonnage, with the probability of increasing it, and the Tube Company has just taken an order for pipe which will require 25,000 tons of plates, so the outlook in this direction is a little better."

By Mr. Lindabury:

Q. Judge, the Government has put in a portion of the minutes of the meeting of the board of directors of the Carnegie Company held on May 4, 1908, the portion being a part of a statement made by Mr. Bope; I will ask you to read the remainder of Mr. Bope's statement.

A. (Reading) "In fabricated structural some very low prices are being made. We have reason to believe that some people are selling short. They seem perfectly willing to take a chance on lower prices being in effect when they are called upon to deliver. So far as general conditions are concerned, they are improving. Crop prospects are excellent; I do not believe the weather of last week did very much, if any, damage, because things were not far enough along to be seriously hurt. Stocks are getting lower and lower all the time, and money continues to pile up. Several of the municipalities have been able recently to place their requirements without any difficulty. Pittsburgh last week sold $3,000,000 of bonds at a little better than 104, and Philadelphia placed a big issue at quite a large premium. All these things show that the money panic is practically a thing of the past, but business is not responding as it ought to."

Q. Judge, I call your attention to an excerpt from the minutes of the Carnegie meeting found on page 529 of Volume II of Government Exhibits, the date being July 2, 1908. There is there recorded the purchase by the Carnegie Steel Com-

pany of the stock of the Schoen Steel Wheel Company. Where was that located, if you recall?

A. That was located west of the City of Pittsburgh in what is known as the Borough of McKees Rocks.

Q. Was it a competitor of the Steel Corporation?

A. No, it was a customer of the Steel Corporation that bought steel for wheels.

Q. Was it making wheels?

A. They were making the pressed wheels, from my recollection.

Q. For what use?

A. Cars, car wheels.

Q. The kind that are known as pressed wheels?

A. They are the steel wheels; most of the car wheels up to that time had been made of cast iron.

Q. Had the Steel Corporation been previously engaged in that industry?

A. No, I think not; they were experimenting with a machine off and on, but I do not think it had been successful up to that time.

Q. For what purpose did they make the purchase?

A. Well, for one reason, because Schoen wanted to sell. He was in need of money; and another reason was because it was an outlet for steel in the hands of the Carnegie Company.

Q. Did the company desire to go into that business?

A. They did, and they went into it after the purchase and are operating it to-day.

Q. Was this what we have been calling in this case a finishing mill?

A. Yes.

Q. This was of the class we call finishing mill?

A. Yes, you could call that finishing.

Q. I call your attention to some more remarks of Mr. Bope made at a meeting of the directors of the Carnegie Company held February 22, 1909, found on page 533, Volume II of the Government Exhibits. Mr. Bope is there recorded as saying: "As a matter of record, it is in order to say that during the week the corporation decided to cut loose entirely from the

policy of co-operation, and prices to-day on all products excepting standard rails are absolutely open." You were present, were you not, at that meeting?

A. Yes, sir.

Q. What did you understand that statement to mean?

A. Why, I understood it to mean practically what it said, but from his standpoint, to mean that they were open in the sense that he was not bound by a fixed schedule of prices. He could go out and take business at such prices as he could get it at, within reason, of course.

Q. And what did you understand his differentiation of rails to mean?

A. That the question of rails either had not been brought up or that he had not been authorized to make any different prices than that fixed by the Corporation of $28 or whatever it was.

Q. What was Mr. Bope's position? I think it appears, but I am not sure.

A. He was first vice-president of the Carnegie Company in charge of sales.

Q. Did he at this time, and from this time on, have liberty to make such prices as were necessary to meet competition and get the trade on products other than rails?

A. You mean from that time on to the present time?

Q. No, I mean about that time.

A. About that time, yes.

Q. Did he have that liberty as to rails, or was the price of that still fixed by the Corporation?

A. The price of that was still fixed by the Corporation.

Q. Were you at the meeting of the American Iron and Steel Institute held just before this meeting of the Carnegie directors at which Judge Gary made some announcement of the policy of the Steel Corporation?

A. I do not know whether I was there or not.

Q. You do not recall?

A. I have no recollection. Of course I read his statement in the press about that time; I knew what was going on, but I do not know that I was there.

Q. Did you understand that the price of steel products

had not been open before that time in the sense that the manufacturers were not free to make their own prices?

MR. DICKINSON: That is objected to as leading, and further objected to because the witness has not shown that he knows anything on that subject and has not been qualified.

THE WITNESS: Prices were not open in the sense that Mr. Bope as a salesman could go out and make what prices he pleased or concessions from the prices fixed by the Corporation.

By MR. LINDABURY:

Q. But were they open in the sense that each manufacturer, so far as you knew or understood, was at liberty to make such price as he chose to make?

MR. DICKINSON: I object to that because the witness has not shown that he had any acquaintance or knowledge of what was done, or is qualified to speak on the subject.

THE WITNESS: I can only speak for the Carnegie Steel Company, and in that sense they never were closed, in the sense that you use in your question.

By MR. LINDABURY:

Q. And was the price of rails closed in the sense that the Carnegie Steel Company was controlled in any way in the making of such price as it chose, save as the control was exercised by the Steel Corporation?

MR. DICKINSON: During what period are you covering by this question?

MR. LINDABURY: In answer to Judge Dickinson's question I will fix the time as any period from the beginning of 1905 down to February, 1909.

MR. DICKINSON: That is excepted to, the witness is not qualified to speak.

THE WITNESS: The prices charged by the Carnegie Steel Company for steel rails were of course fixed by direction or supervision, or whatever you call it, from the Steel Corporation by the Steel Corporation officers. The price of steel rails was a sort of standard price, had been for several years, satisfactory to the railroads and satisfactory to the manufac-

turers; there was no discussion about it that I know of; a good deal like you go up the street and you buy a hat and pay $5 for it, and you go to some other store and you pay $5 for the same hat. It was a sort of standard price; it was not discussed.

Q. Was it fixed during any part of this period by agreement between the manufacturers, express or implied, open or secret?

MR. DICKINSON: This is objected to because the witness has not qualified to speak. It is also objected to because it involves his opinion upon a question of express or implied, without showing any facts upon which that opinion is based.

MR. LINDABURY: Let us have the question read, to see whether or not it is open to all those objections.

(The question was repeated by the stenographer.)

THE WITNESS: During that period when I might be said to be familiar through my relations with the board with the question, there had been no discussion of price. I do not consider myself qualified to say what happened before that time. I do not know anything about it.

By MR. LINDABURY:

Q. Judge, while on this subject of control of prices or production, do you remember the statements or any statement of the attitude of the Corporation made by Judge Gary at the Gary dinners, or any of them?

A. You mean the control of prices by the Corporation or control by concert of action with other people?

Q. The latter.

A. I remember at the first dinner, and I think at the others at which I was present, especially at the first dinner, he said that the Corporation would not enter into any agreement either to maintain prices or to restrict production with its competitors and he did not ask them to do anything of that kind; but, as I said yesterday, to keep cool and take what business came their way, without trying to take the other man's business away from him, and that this unpleasantness would be over that much sooner.

Q. You were speaking yesterday of the various policies

of the Corporation, or rather of the policy of the Corporation with regard to various subjects, its attitude towards competitors, its treatment of its employes and its customers, and you spoke sometimes of those polices as the polices of Judge Gary and, I think, sometimes as the policies of the finance committee. Whatever difference of views there may have been in the early days within the Corporation on those various subjects, can you tell me whether or not those policies have now become the settled policies of the Corporation?

MR. DICKINSON: This is objected to because it is entirely indefinite, covers a long period of time, does not specify the particular policies or the particular time at which they are supposed to have prevailed, and calls for the opinion of the witness and a general conclusion of his without asking him for any facts on which the Court can estimate whether or not his answers are correct or upon what his opinion is formed.

By MR. LINDABURY:

Q. I am not asking for information, but for facts. You may answer, Judge.

A. The policies of which I spoke yesterday are always known as Judge Gary's policies, because he has been their prophet and high priest, and the first man to insist upon them. He has gradually brought the finance committee and the board of directors and the active officers of the Corporation into line with his own views, until to-day I think I can say that the board, which includes the finance committee, and the principal officers who have a hand in forming policies, are unanimous, following him, and you might say that this line of policy, has become the common law of the Corporation, and will continue pretty much as it is now as its settled policy.

MR. DICKINSON: This is objected to further as the witness is indulging in prophecy.

By MR. LINDABURY:

Q. Judge, had or not these policies become the settled policies of the Corporation before the suit was brought?

A. Yes. They are that much more settled now, because there have been a couple of years more added to their age.

Q. Judge, I think you are one of the so-called interlocking directors of the Steel Corporation, are you not?

A. I believe I am, in a small way, open to that reproach.

Q. What other corporations are you a director in?

A. Do you want them all?

Q. Oh, no. What other steel corporations, if any, are you a director in?

A. The Pressed Steel Car Company.

MR. COLTON: Is he entitled to designation as an official interlocking director?

MR. LINDABURY: He is a director and he is a director in some other corporations. I do not know what is your limit of interlocking.

MR. COLTON: I was looking to see whether he was mentioned in the bill or our proof.

MR. LINDABURY: I do not know.

MR. DICKINSON: He is not mentioned.

THE WITNESS: If I am not, I will sustain the objection.

MR. DICKINSON: Of course we might amend it and put him in.

MR. LINDABURY: If he is not mentioned, that is unfair to him.

By MR. LINDABURY:

Q. You are a director in the Pressed Steel Car Company?

A. I am a director in the Pressed Steel Car Company.

Q. Are you a director in any other steel corporation?

A. No, sir.

Q. Are you a director in any other corporation using large quantities of steel?

A. Yes; the Philadelphia Company of Pittsburgh, which controls the natural gas business there and the artificial gas.

Q. Are you an office holder in that?

A. President.

Q. Does that use any very large quantity of steel?

A. They use large quantities of iron and steel in their pipes and transportation lines, castings, oil well fittings, and so on.

Q. Can you give us an idea of the amount they use, they and the Pressed Steel Car Company, in comparison with others?

A. I cannot from recollection. It is large; it varies from one time to another.

Q. Can you give any approximation or any idea of the amount they consume?

A. No, I cannot. The Philadelphia Company last year expended in improvements in the way of material alone over a million dollars for pipes and material of that sort. I cannot tell you what the Pressed Steel Car business is, because I am not very active in that.

Q. Have you ever attempted to control the purchases of either of those companies in favor of the Steel Corporation?

A. No, sir, I have not.

Q. Have you ever been asked by any representative of the Steel Corporation to use your influence to that end?

A. I suppose and I think that perhaps once or twice my good friend Mr. Schiller has spoken about the Philadelphia Company purchases, as he might to anybody else.

Q. Who is he?

A. President of the National Tube Company. I have never interfered with the purchases by that company. They go out and buy wherever they can buy the best. As a fact, I think they buy more of their pipe and fittings from independent manufacturers than they do from the Steel Corporation.

Q. You think they buy more from independents?

A. They do.

Q. From a single independent, or generally?

A. Generally.

Q. I think you have a relative connected with the purchasing department of that company, have you not?

A. My son.

Q. What is his position?

A. General purchasing agent.

Q. Now, as to the Car Company, have you ever used your influence with that company to control or direct their purchases towards the Steel Corporation?

A. If you knew the president of that company you would know that nobody could use influence with him; he would do as he pleased.

MR. DICKINSON: I object to that.

By MR. LINDABURY:

Q. You have not tried to control it?

A. No, sir.

Q. Have they confined their purchases to the Steel Corporation?

A. I do not think they have in late years.

Q. And by late years what do you mean, since the suit was brought?

A. The last five or six years.

Q. Where have they bought, in the market generally?

A. I believe so. The trouble I have had with the Pressed Steel Car Company has generally been the other way; they want to sell cars to the Bessemer Road.

Q. What is that?

A. I say the trouble I have generally had with them on the interlocking proposition has generally been the other way; they want to sell cars to the Bessemer Road.

Q. Have you resisted them?

A. Not successfully when their price was lower than other people's.

MR. LINDABURY: Take the witness.

CROSS EXAMINATION

By MR. DICKINSON:

Q. You are a practicing lawyer in Pittsburgh?

A. To a limited extent.

Q. You have a firm there?

A. I have a firm, I am a member of a firm, yes.

Q. What part of your time do you devote to that business?

A. Oh, I am in and out there every day, more or less when I am home. I give it as much time as I can, but I have a number of other things to look after.

Q. You are also president of a railroad company there?

A. Yes.

Q. Are you an active president of that company?

A. Yes.

Q. Have you an office there with that company?

A. In the Carnegie Building, in connection with my law office, yes.

Q. In connection with your law office?

A. Yes; I use the same room.

Q. Have you an office also in connection with the Carnegie Company?

A. No, sir.

Q. Have you an office here in New York?

A. No.

Q. Have you an office anywhere in connection with any of the subsidiaries of the United States Steel Corporation?

A. No, sir. Let me explain to you, Judge. Our law offices are on the tenth floor of the Carnegie Building, and I follow a kind of milk route. I am there in the morning and I go to the Philadelphia Company for an hour or so in the afternoon, and then I go back to my own office and stay there until I go home. Now the Carnegie offices are all around in that building, and that is my office for anything I have to do.

Q. Have you any active duties which involve any management of the details of any part of the business of the Carnegie Company?

A. I have not, except as a member of the board, and the somewhat nominal position of chairman of the board, which I regret to say does not carry any salary or special responsibility, except in an advisory way. Mr. Dinkey's office is right above mine, and he and I see each other very often during the day or during the week.

Q. You are also a director of the United States Steel Corporation?

A. Yes.

Q. Where are those meetings held?

A. Here in this building.

Q. How often?

A. Once a month.

Q. Do you attend all those meetings?

A. Not all of them, perhaps three-fourths of them.

Q. Have you been a member of the finance committee or

executive committee of the United States Steel Corporation?

A. I have not.

Q. Have you ever attended any of those meetings?

A. I never attended an executive committee meeting. I think I have been in one or two finance committee meetings when I had some special matter in which I was interested, not as a member of the committee.

Q. You have not been attending their meetings from time to time and following their discussions?

A. No, sir.

Q. Now, these policies that you spoke of of Judge Gary, did he have any opposition to the establishment of those policies or bringing about the triumph of his views?

A. He did.

Q. From what source?

A. From many sources.

Q. Let us hear what they were?

A. Well, from his operating people, I think.

Q. They were employes, were they?

A. Yes, if you call the presidents of the subsidiary companies employes, they were.

Q. They were under his control, were they not?

A. They had a habit of expressing their opinions.

Q. I understand, but I am speaking now of actions; did they in their actions go counter to his views?

A. On the final decision of any question, after it had been discussed, of course Judge Gary's finance committee or the board of directors was supreme.

Q. When, according to your recollection, did the first question come up that you know of where Judge Gary defined any views in respect of any policies such as you have spoken of here? Just give the time and the year.

A. That is impossible to do; it has been continuous.

Q. How far back does your earliest memory of that go?

A. It started with the question of publicity, as soon as the Corporation was formed.

Q. What scope of publicity did his views, as then expressed, involve?

A. Involved the publication of reports, statements through

the year of the business, and the fullest kind of an annual report.

Q. I believe you have stated in your direct examination that everything was published that they consistently could. Do you remember using that language or something to that effect?

A. Something to that effect, yes.

Q. Were you acquainted, from the time of the formation of the United States Steel Corporation down to a period in 1904 or 1905, and during the period of their existence, with the existence of any formal pools—I will call them—in which the Carnegie Company or the American Steel & Wire Company or the Illinois Steel Company were participants, or any association to which they were parties, which during that period gave percentages to them of products or in any way affected prices? Did you know finally of their existence or did you know during that period of their existence?

A. I did not know of the connection of the companies, other than the Carnegie Steel Company, with these associations at that time. I did know in a general way that the Carnegie Company was a member of some association. I never had occasion to enter into it; I did not know the terms of those agreements until 1905.

Q. But you knew at the time of their existence and before 1905 of the Carnegie Company having connection with them?

A. Those that have come out since, yes.

Q. No, but I mean, when was the knowledge of their existence first acquired by you?

A. I cannot tell you; I heard it mentioned from time to time what this association or that association was doing; some of it.

Q. Did you hear as early as 1901?

A. I don't remember.

Q. As early as 1902?

A. I might have; I might have heard it referred to. You will find occasionally through these minutes some reference up as far as 1905.

Q. I simply want your recollection.

A. I am trying to explain to you that these matters were

not brought up in any formal way, but there would be some mention of an association, that the association did this or that or the other thing, but no attention was paid to it; it never was brought before me as counsel, if that is what you mean.

Q. No, I do not mean as counsel, but you were at that time a director of the Carnegie Company?

A. I was.

Q. And chairman of the board of the Carnegie Company?

A. Yes.

Q. You were a director of the Carnegie Company?

A. Yes.

Q. At that time?

A. Yes.

Q. What I want to get at, Judge, is for you to fix the earliest period that you recall that you knew of the Carnegie Company's connection with any such association as I have described.

A. I am trying to tell you, but I cannot, because, as I say, I have heard them mentioned off and on in that incidental way; never inquired into them more than that. I knew there were such things as associations in the United States of various kinds of people in manufacturing.

Q. Did you hear them mentioned as early as 1902?

A. I cannot tell you; I suppose I did.

Q. You suppose you did?

A. I am trying to be frank.

Q. Did you have any talk, when you heard these mentioned, with Judge Gary on that subject?

A. I told you no, the matter came up incidentally.

Q. But you knew of the fact of this connection with some association of this character, whatever it was?

A. His connection, do you say?

Q. No, the connection of the Carnegie Company.

A. Surely I did.

Q. Was any publicity given to that? Was that a matter of general knowledge and notoriety in the newspapers?

A. It was a matter of general knowledge to the trade that those associations existed.

Q. Was it a matter of common knowledge to the public?

A. I do not know.

Q. Did you have any knowledge at any time prior to 1904 of the Carnegie Company's connection with what is known as a structural pool or structural association?

A. If I did I have forgotten all about it. I may have heard it mentioned.

Q. Did you have any knowledge in 1904 or at any time prior thereto, and after the formation of the Carnegie Steel Company, of the plate pool or association?

A. I make practically the same answer; I may have had and do not remember it.

Q. I will ask you the same question about the boiler pool.

A. I make the same answer.

Q. And the cotton tie pool?

A. I do not know anything about the cotton tie pool. I don't know to-day that there was one.

Q. Did you have any knowledge during that period of an association known as the boiler tube association, to which any of the constituents of the United States Steel Corporation were parties or members?

A. No, sir; I did not know anything about it. I might as well answer that generally. I did not know about the arrangements of the other companies at that time.

Q. Did you attend any of the meetings of any rail pool or association of constituents of the United States Steel Corporation and their competitors by which they had any understanding of any character that affected the sale of rails or the output or percentage of rails?

A. I did not.

Q. When did you first learn of the connection of the American Steel & Wire Company with the various wire pools?

A. About 1909.

Q. And you knew nothing of that before that time?

A. No, sir.

Q. Did you know of any meetings that took place of any associations in the nature of pool associations, or which had agreements in respect to price understandings, to which any of the subsidiaries of the United States Steel Corporation were parties, which meetings took place at any time between say the middle of 1905 and the first Gary dinner?

A. I did not. My understanding was that so far as the Carnegie Company was concerned they had gone out of all those associations in 1904 or 1905. Outside of that I did not have any knowledge of any other concerns.

Q. Judge, you had known about pools before the formation of the United States Steel Corporation—did you or not?

A. Not in any way that I could testify to. I was not a member of the Carnegie board or an officer.

Q. Of course, I am not asking for anything that might refer to your relations as counsel, but were you a director of the Carnegie Company before the formation of the United States Steel Corporation?

A. No; I was not interested in the company at all.

Q. Did you ever attend any meetings of structural manufacturers, including representatives from the Carnegie Company and the Illinois Steel Company, which meetings took place at any time previous to the Gary dinners, at which were present, in addition to manufacturers, Mr. William C. Temple, the former commissioner of the structural pool, or his assistant, John C. Langan? I will ask you the same question with regard to the plate association or pool.

A. No, sir.

Q. You give the same answer?

A. Yes, sir.

Q. How many of these Gary dinners did you attend, Judge?

A. I cannot remember the number.

Q. But you were at the first one?

A. I think, as I said yesterday, I was at every so-called Gary dinner. I was not at one or two of the American Iron & Steel Institute dinners.

Q. The first dinner—you were at that, I believe?

A. Yes.

Q. Where did that take place?

A. At the Waldorf-Astoria Hotel.

Q. Where did the guests assemble, in some forum or ante-room?

A. I don't remember. I do not know one room from another room there, but I think it is what they call the Astor gallery. It has an outside room. The table is set in one

room, and we went into the outside room and put away our hats and overcoats and stood around a little bit and then went in to the dinner. If I gather what you want, there was no formal meeting outside of that.

Q. That is to say you did not enter into any?

A. No, sir.

Q. If there were any you knew nothing about it?

A. I do not think there was one that evening, because the men kept coming there as though they were just coming in from out on the street, wearing their hats and overcoats.

Q. You did not attend any formal or informal meeting before that dinner on that day?

A. No, sir.

Q. After laying aside your hat and coat and some greetings, then you did go in to the dinner?

A. I won't admit that even. I will admit I went in to the dinner, but I will not admit the greetings.

Q. How many people were at that dinner, Judge?

A. There were seventy-five, maybe a hundred.

Q. Were there any newspaper men there?

A. The editors of the two trade papers were there, the Iron Trade Review and the Iron Age, I think.

Q. And iron and steel manufacturers were there?

A. Yes.

Q. Were there any of the customers of iron and steel manufacturers there?

A. I did not know everybody that was there, but I do not think there were.

Q. So far as you know, then, it was composed of the iron and steel manufacturers and these two editors that you have referred to?

A. And people like myself that were neither one thing nor the other.

Q. You were an officer, were you not?

A. Yes, sir.

Q. Of one of the manufacturing companies?

A. Yes, sir.

(Whereupon a recess was taken until 2 o'clock p. m.)

AFTER RECESS.

JAMES H. REED,

the witness under examination at the taking of recess, resumed the stand.

CROSS-EXAMINATION (Continued),

By Mr. Dickinson:

Q. Judge Reed, after these several Gary dinners which you attended, you did not attend any meetings?

A. The so-called committee meetings? No, sir.

Q. You were not a member of the general committee?

A. I was not.

Q. And not a member of any of the subordinate committees.

A. No, sir. If you wish I can give you the dates of those dinners that I attended. I looked them up.

Q. I think they are in the record.

Mr. Lindabury: The ones that you attended?

The Witnesss I was at all of them, I think.

Mr. Lindabury: The dates of all of them are in the record.

Mr. Dickinson: They are all in the record.

By Mr. Dickinson:

Q. Did you know there was a general committee?

A. Yes, sir.

Q. And subordinate committees?

A. Yes, sir. I knew that because it was stated at the first dinner that such committees would be appointed.

Q. You do not know, of your own knowledge, what they did?

A. I do not.

Q. Judge, referring to your testimony in regard to the Empire Steel Company——

A. The Empire Rail Company, I think, is the right name.

Q. It says here the Empire Steel Company, in your testimony.

A. I guess I used both.

Q. You stated, on page 10604 of the typewritten record, as follows:

"The purpose was to have each one of the rail manufacturing companies sell to the Empire Steel Company—I believe is the name—such rails as it ordered."

Judge, were not all of the rails made by all of those who were to be parties to this agreement to be sold by the Empire Rail Company, and was there any question——

A. That is what I intended to say, Judge Dickinson, if I did not say it.

Q. You did not mean to say that the Empire Rail Company had a discretion to take from these companies?

A. No, sir.

Q. And it really was to sell all the rails produced by all of them at a fixed——

A. All of the rails for which there was a market, of course.

Q. I mean, all that were sold?

A. All that were sold were to be sold through that company.

Q. Then these parties participated in the profits on the basis agreed upon?

A. They were to be put to the rail company at a price. The rail company was to re-sell them. Whatever profit there was in the transaction would be distributed to the stockholders of the rail company as in the case of any other corporation. If the rail company sold rails to the X. Y. Z. Railroad, and the X. Y. Z. Railroad failed, the loss would be that of the rail company, not of the manufacturer. They took their own commercial risks.

Q. But they were really the Empire Rail Company; that is to say, they owned all the stock?

A. They did; but you see the difference is that a loss would be distributed over all the stockholders. It would not fall on the particular manufacturer.

Q. It would not fall upon the particular one whose particular sale was not paid for?

A. That is what I mean.

MR. LINDABURY: You do not mean that it would not fall

upon the particular one whose particular sale was not paid for, but whose particular product was not paid for?

THE WITNESS: Yes.

MR. DICKINSON: Well, either way.

MR. LINDABURY: No; because the manufacturer did not make the sale.

THE WITNESS: I will say, whose particular delivery was not paid for.

By MR. DICKINSON:

Q. When the rails were furnished the Empire Rail Company, they went there for the common account of all?

A. Yes, sir.

Q. And if the particular rails produced by any one of the companies were sold and the Empire Rail Company did not collect, the loss did not fall on the company that furnished the rails, but it fell upon their aggregate?

A. That is exactly right.

Q. Judge, was there not a provision in there that the Carnegie Steel Company, Limited, during five years was not to make any girder rails?

A. I have no recollection.

MR. LINDABURY: Would you mind, Judge Dickinson, telling me what you are reading from?

MR. DICKINSON: Page 1158.

MR. LINDABURY: Of which book?

MR. DICKINSON: Volume III. I will read the statement, to refresh your memory.

THE WITNESS: If you will read it, or let me look at it, I will make an answer.

By MR. DICKINSON:

Q. Here it is (handing book to witness).

A. I have no independent recollection of it, apart from reading it.

Q. Does that refresh your memory?

A. It does not. I have no doubt it was in there. It is there.

MR. LINDABURY: Where on this page is that?

MR. DICKINSON: The part I showed Judge Reed is as follows, on page 1158:

"The Agreement by The Carnegie Steel Company, Limited, that during five years it will not make any Girder Rails, and that it will not, during five years, make for, or sell to, any customer other than the Empire Rail Company Steel Rails weighing 50 lbs. per yard or upward, for use on the North American Continent, restricting its production of Rails, other than for export, to the 29½% of the total sales of Rails for use in North America to be allotted by the Empire Rail Company."

By MR. DICKINSON:

Q. Do you recollect that there was a percentage allotted to each of those companies under that Empire agreement?

A. If you will let me look at that agreement I can tell you intelligently. I haven't looked at it for fifteen years.

MR. DICKINSON: This is not the agreement itself.

MR. LINDABURY: It is Mr. Schwab's report. Let him look at it and see what it is. Let him take a little time on it.

THE WITNESS: (After referring to Government Exhibits, Volume III): Now, maybe I can answer you.

By MR. DICKINSON:

Q. The question is, did it not provide that each one of those companies would furnish a certain percentage of the entire amount of rails sold by the Empire Rail Company?

A. It looks that way, as though the contracts with separate companies would provide for a certain proportion.

Q. To each?

A. To each, which would be equal to the proportion of stock that they held.

Q. I desire to call attention to a question that was asked you and an answer as given here, which I think may be erroneous. Page 10612:

"Q. When did you first hear, if you happen to recall, of the offer of the property to the Federal Steel people through J. P. Morgan & Company or otherwise, and of their entertainment of the offer?

"A. While I was at the dinner that was given to Mr. Schwab at the University Club in the winter of 1900."

A. That answer as read from the record is manifestly a mistake. I did not hear of this matter until several weeks after the dinner. May I add to that, and as I now understand the date, some little time after Mr. Schwab's interview with Mr. Morgan at his house.

Q. On page 10629, referring to the acquisition of Union Steel, the question was asked:

"Q. Did you have anything to do with the start of those negotiations?"

And then you answer and speak of meeting Mr. Frick at the Union League Club. Was that in New York or Pittsburgh?

A. In New York.

MR. DICKINSON: I thought it was, but I thought I would make it plain.

MR. LINDABURY: Judge, there seems to be doubt about whether I offered those letters, Defendants' Exhibits 32 and 33, for identification. I wish to do it.

MR. DICKINSON: Offer them now, then. I suppose we have excepted to them.

MR. COLTON: One you had identified and one you had not.

MR. LINDABURY: The other I will offer on the strength of its having been produced from the Morgan files at your request. The first one the witness identified as a paper that he took part in drafting, but he did not remember the reply.

MR. DICKINSON: You offer them now?

MR. LINDABURY: Yes; I offer them.

(The papers referred to were thereupon marked "Defendants' Exhibits Nos. 80 and 81, June 18th, 1913," and will be found in the volume of Exhibits.)

By MR. DICKINSON:

Q. Judge, you recall being here in New York, do you not, February 4th, 1901, and drawing a railroad agreement which I here show you?

A. As to the Wabash?

Q. Yes, the Wabash.

A. Yes, I remember that.

MR. LINDABURY: You have put that in evidence, I believe it is already in?

MR. DICKINSON: Yes.

By MR. DICKINSON:

Q. Was it before or after you drew this agreement that you heard of the proposed sale or the offer of Mr. Carnegie to sell the property?

MR. LINDABURY: Would you mind telling me the date of it?

MR. DICKINSON: February 4th, 1901.

THE WITNESS: I cannot remember that. The agreement was the result of weeks of negotiation, and the date that is put there does not probably represent the time at which it was drawn, I mean the date might have been a week or two or a month later. We started on that thing as soon as Mr. Carnegie got back from Europe in November, and we had a great many meetings, Mr. Ramsey, and Mr. Carnegie and myself, up at his house, back and forward. The forms of the contract were taken to Ramsey's counsel in St. Louis, and probably that date, February 4th, is the date of execution, and I cannot tell you exactly whether I had heard of those negotiations at that time or not. I assume I had at the date of the formal execution.

Q. But you cannot fix that date?

A. No, sir.

Q. You cannot say one way or the other?

A. No, sir.

Q. But these negotiations had been going on for some time?

A. Yes, sir.

Q. And they culminated in this?

A. I think they started in the previous winter, and we talked and talked, and Mr. Carnegie came back in November. It took us quite a while to draw them up.

Q. Judge, do you recall now from memory the terms of this contract for the purchase of the Union properties?

A. Not very well; I do not remember the amounts. Of course I know in substance, we purchased those properties

and were to pay for them with bonds—some bonds guaranteed by the Steel Corporation.

Q. Do you know when these negotiations began?

MR. LINDABURY: You mean for the acquisition of the Union Steel?

MR. DICKINSON: Yes.

THE WITNESS: What is the date of the contract?

MR. DICKINSON: The date of the contract is the 15th day of December, 1902.

THE WITNESS: Not more than thirty days, I should say, before that contract was executed.

By MR. DICKINSON:

Q. Who conducted the negotiations?

A. As I stated, they started with Mr. Frick's statement to me at the Union League Club.

Q. I mean to say who conducted the negotiations?

A. They were conducted by Mr. Perkins and Judge Gary on the part of the finance committee, Mr. Frick and Mr. A. W. Mellon; Mr. Donner I suppose was an influential party.

Q. When were you called into the matter after this first communication passed through you about Mr. Frick wanting to sell; when were you called in actively into the negotiations?

A. I guess I knew negotiations were going on, and was more or less in touch with them, although I was not in it. The first I had to do with it was when they came to Pittsburgh to look over the plants, the finance committee, and some of the officers of the Corporation came to Pittsburgh.

Q. Had anything been drawn up then?

A. Nothing was drawn up at that time.

Q. Was anything drawn before this paper was drawn that you recall?

A. I do not recall anything. We went to Donora and spent some time there looking over the property, had a car and an engine or two cars; then we went up to Sharon and spent a little time in looking over the property there. I went on to Cleveland with them. We all talked over the question of closing the purchase. Mr. Perkins got off somewhere and got a

long distance telephone and got hold of Mr. Frick on the telephone and told him that the finance committee were satisfied to go and close it. I got on the train at Cleveland, went back to Pittsburgh and started in to draw these papers.

Q. Was anything reduced to writing before these papers were drawn?

A. I have no recollection of anything. I am pretty sure there was not.

Q. You spoke of Judge Gary exhorting like a Methodist preacher. Were those exhortations occasional, and upon revival proceedings, or was it a regular spiritual pabulum that he dispensed from time to time?

A. I do not know what a pabulum is, but that statement was made in connection with these dinners and refers to the speeches that he made at the dinners.

Q. At the dinners alone?

A. At the dinners alone, yes, sir.

Q. It does not refer to anything that transpired at meetings of directors?

A. No, sir.

Q. You did not have that in mind when you referred to this?

A. No, sir.

Q. Judge, when the policy of the Carnegie Company prevailed of going out and getting business and taking it wherever it could get it, did that have as a consequence the running of its mills full?

A. That was the purpose, and they generally succeeded.

Q. Suppose there was no effort to get business by any particular company, and there was a stagnation in the trade and the capacity of the plants was very much in excess of the demand, what effect would that have; would it not have the effect of shutting down some of the capacity and just the opposite of running full?

A. Naturally it would, but the effect of the Carnegie policy was that somebody else shut down while they ran.

Q. Now, if they ran full and to the utmost capacity could they not produce cheaper than if they ran only to a percentage very much less than the full percentage of their capacity?

A. That is right, but if you have got 100 per cent. capacity and only 50 per cent. of business offered in the country, you have got to take it the best you can and do the best you can with it.

Q. If the prices were not changed and the demand was not more than half of the capacity, if the demand was only split and apportioned among all, the effect would be that some of them, a great many of them, would have to shut down a part of their capacity, would it not?

A. Naturally that would be the effect; but the problem that presented itself in December, 1907, was two-fold: One was to prevent the failure of a large number of people engaged in this industry, as well as a large number of our customers who were loaded up with goods that they had not sold; another was to distribute what business there was in a legitimate kind of a natural proportion among all the manufacturers, so that everybody would have something to do and the greatest good would be accomplished for the greatest number.

Q. And the result of that was to maintain prices, was it not?

A. Within bounds, yes. Prices did not maintain themselves absolutely. They were maintained within limits; what I mean is there was no sudden drop, or, to use the vernacular expression, no "going down the toboggan." There was a gradual drop in prices.

Q. If at that time any large concern like the Carnegie had pursued the old policy of the Carnegie and had run full, had gone after business in the old way, would it not necessarily have been by offering some inducements in the territory of others, or to the customers of others, to get the business by offering a lower price?

A. Yes, sir.

Q. And that would have disturbed the prices, would it not?

A. Of course it would.

Q. And nothing of that sort, I understand, occurred?

A. No, sir. I do not know what period you are covering.

Q. I am talking about the period of 1907 and 1908.

A. In the latter part of 1908, as I remember it, prices did

begin to soften. You know when you get a lot of people together in a common calamity, they are very friendly, and then, when the flood or the fire or whatever it is is over, they begin to drift apart again, and go about their daily business; and that was about the condition in the latter part of 1908 or the beginning of 1909. There was a softening in prices, and some people were beginning to take business where they could get it. This religious fervor of the Judge's had lost its effect a little bit on some of the unregenerate manufacturers. That was natural.

Q. Human nature began to assert itself?

A. Human nature began to assert itself.

Q. Just as soon as the restraining influence of a common danger had been to some extent removed?

A. That frequently happens, Judge.

Q. Judge, I did not ask you about prophecy, because I objected to that; but human nature is pretty constant, is it not?

A. It is about the same year in and year out.

Q. Judge, do you know anything about a change in the conditions about February 19, 1909, in reference to prices?

A. That is what I was trying to explain, Judge Dickinson; that that was going on. Do you want me to go on and tell you?

Q. That is what you were referring to awhile ago?

A. That is what I was referring to, and in that connection, if you will permit me—but perhaps I had better wait for your question.

Q. Was there not what was known then in the trade and in the trade publications as an "open market?"

A. This softening process was going on, as I say, during the winter of 1908. A number of manufacturers were beginning to take business and make concessions in prices. The Steel Corporation plants stood stubbornly to the policy announced in 1907. So did some of the larger manufacturers. Finally, in February, 1909, it was evident that the trade, the purchasers, were expecting a reduction in prices, and would not buy; and there was a sort of a deadlock. So, at that time, it was decided that this co-operative movement

had perhaps gone as far as was necessary to accomplish what was undertaken, which was to prevent panic conditions from spreading, and after that everybody would attend to his own business as he had before the panic.

Q. Had not the Republic Iron & Steel Company gone in and cut prices?

A. I do not think at that time, Judge.

My recollection is that was in 1911. What happened, as I remember, was that they made this announcement that there was what you call an open market; prices were reduced, people went in and bought pretty heavily, and prices gradually stiffened up running along through 1909. Everybody supposed the panic was over and they were going to go ahead again, and then there came a kind of cessation of business in 1910, and some time in the winter of 1910 or the early part of 1911, the Republic made a very drastic cut in prices.

Q. After this market stiffened up, after 1909, were there more meetings and more dinners; were there more Gary dinners?

A. We had a dinner February 18, 1909, at which there was not very much said or done except general talk about the conditions, and then I believe there was a meeting of the American Iron and Steel Institute in the spring of 1909. That was a regular meeting at which they discussed various scientific papers, winding up with a dinner.

Q. And conditions had changed, hadn't they, in 1910, in contradistinction to what they were in this open market period in 1909?

A. Well, that is right, but we had no dinner in 1910. The last dinner I remember of was a testimonial dinner that was given by the other manufacturers to Judge Gary on October 15, 1909, at which they presented him with a loving cup——

Q. After the October 15th dinner——

MR. LINDABURY: Hold on; you stopped him. I think there was something on his mind.

THE WITNESS: I was simply going to say that they presented him with a loving cup and there were various eulogistic speeches made by men entirely outside of the Corporation

as to how much good the Judge had accomplished by his policy in preventing countless bankruptcies and suffering, both to manufacturer, customer and workman. They are really entertaining, if you would like to have me read them; they are eulogistic.

By Mr. Dickinson:

Q. Was there not a greater constancy of prices prior to the open market that you spoke of in 1909 than there was in the short period following it?

A. How long prior?

Q. During what was called the open market; how long did that last?

A. I think the market started some time in February, 1909, and I suppose it continued down to to-day. There never was any co-operation after that time, as I remember.

Q. Didn't they have dinners after that?

A. No; we had to buy our own dinners after that, except the one I am telling you about, in October, 1909.

Q. Did you have a dinner in January, 1911?

A. Not that I know of.

Q. There is one shown in the records as of that date; I think it is January 11th.

Mr. Colton: Maybe it was a luncheon.

The Witness: I think there was a luncheon at which I was not present. May I look at this (referring to two books handed to witness)?

By Mr. Dickinson:

Q. January 11th, 1911, is my recollection.

A. There was a dinner in 1911. I was wrong, January 11th. But everybody seems to have talked about everything else except business. There does not seem to have been any particular purpose at that dinner except to get together and have a dinner.

Q. Get together and have a dinner?

A. And hear Mr. Hoyt make a speech and Mr. Perkins, and Mr. Butler, and so on.

Q. Did Judge Gary make a speech at that dinner?

A. Yes.

Q. Do you recall that dinner, anything that was said at it, I mean independently of the book before you, do you?

A. No, I do not remember that there was anything significant at it. I will not take time to read these statements of the Judge's through. It does not seem to me to be anything except that he sort of thought we ought to get together again and keep up the acquaintance.

Q. Did you get together again and keep up the acquaintance?

A. We got together that night and kept up the acquaintance that evening very well. I am trying honestly to answer you. I do not know of any purpose in having that dinner except that the Judge desired to have a sort of social time and get all these people together. That is all.

Q. You do not recall the speeches now?

A. Not now. I have a copy of them here.

Q. Well, we have them in the evidence. Now, some time after that the Republic did come in and cut prices, did it not?

A. Yes; I do not know what date that was. Can anyone tell me?

Q. That was in May, 1911.

A. This dinner was in January.

Q. What effect did this action of the Republic have upon prices? Did it bring an open market?

A. That would naturally have a disastrous effect upon prices and produce an open market, very open.

MR. LINDABURY: Wide open?

THE WITNESS: Wide open.

By MR. DICKINSON:

Q. What do you mean by "quite open?"

A. "Wide open," that is Mr. Lindabury's expression.

Q. Explain a little more fully what you meant by that?

A. Why, it meant that everybody went out and took business, and there was a good deal of bad feeling, I think, temporarily, about that action; it was unexpected.

Q. There was some pretty sharp competition then, was there not?

A. There was for a little while, that didn't do anybody any good.

Q. We have referred to purchases of pig iron by the Carnegie Company on one or more occasions. Was not the Carnegie Company a large producer of pig iron also at that time?

A. It was at that time, but it did not produce enough for its needs.

Q. Was there any period during which the Carnegie Steel Company purchased iron, and some of its furnaces were idle and not running to full capacity?

A. I cannot tell you that, but I would not think so.

Q. You do not know of that?

A. I do not know of that; I do not know why they should.

Q. You were asked about the Tin Plate Company, whether or not it cut the prices.

A. Yes, and I said I did not know, didn't I?

Q. I haven't got your testimony here; I have only some scant notes, and I was going to ask you whether you did know about that?

A. I do not know anything about it. That, I think was in connection with Mr. Bope's statement in the minutes, wasn't it?

Q. You mean you do not know whether they did cut prices or not?

A. I mean that you got that note on your notes in connection with a minute that Mr. Lindabury read to me, in which Mr. Bope stated that the Tin Plate Company expected to make a drastic cut in prices, and I said I did not know whether they had or not; I do not know anything about it. That, I think, was my answer.

Q. And you do not know anything about the prices the Tin Plate Company had at that time?

A. No, I do not.

Q. Judge, were you sufficiently in touch with the selling and buying operations of the Carnegie Steel Company from time to time, so that you now can recall anything as to the prices of pig iron or any of its products at any particular period?

A. No, sir; I would not undertake to do that.

Q. You could not give us any accurate information on that?

A. No, sir.

Q. The question was asked you about a controversy that

Mr. Corey referred to between the Carnegie Company and the Union Steel Company. Will you please state a little more fully what that is, what he referred to?

A. I do not know to-day what the particular controversy was except the Union Steel Company was a purchaser from the Carnegie Steel Company of iron and steel as products, pig iron, I suppose, and billets. There probably was some question arising between the two companies as to the prices to be charged for a particular month.

Q. Your attention was called to a meeting of November 4th, 1902, and a statement by Mr. Corey as follows:

"They cannot say that we forced the price up, as we did not buy any iron, but I do not think we should force them to pay more than the market price for billets, except, perhaps, in the case of the Union Steel Company. I think it would be a good plan to hold them to the contracts if it can be done. I am strongly in favor of pushing the Union Steel Company as hard as we can."

You say that this referred to some controversy between the Union Steel and the Carnegie Company?

A. I have no independent recollection of it, but reading that I would assume that it was some question arising out of a contract of sale and purchase.

Q. But you do not undertake to explain it from your knowledge and memory?

A. I am sure of this, that it was not any dispute between them as competitors.

Q. Do you know what kind of contracts existed between them that Mr. Corey referred to?

A. I suppose they were buying on a scale contract.

Q. I am asking you if you now recall?

A. I do not recall.

Q. So as to speak of it with knowledge?

A. I do not.

Q. At times that the Carnegie Steel Company purchased pig iron, did it not at those identical times also have sliding scale contracts with its customers, the prices under which depended on or were based upon the price of pig iron?

A. It did, the price of pig iron for a certain period, the average price.

Q. Judge, in referring to this reference of Mr. Corey to the contract of the Union Steel Company, you stated that you were sure that it referred to no matter of competition between the two companies. What do you base that statement on; have you any distinct recollection about the matter?

A. Only on the language of the minute itself. Evidently it refers to a contract of that kind.

Q. That is just your interpretation of the minute?

A. That is my interpretation of the minute.

Q. And not a statement of any fact that you recollect?

A. No, sir.

MR. DICKINSON: Judge, that is all.

RE-DIRECT EXAMINATION

By MR. LINDABURY:

Q. Don't you remember whether there was a dispute at that time with the Union Steel Company over this contract or contracts with the Carnegie Company?

A. I do not, Mr. Lindabury, have any independent recollection.

Q. Then I misunderstood the matter when I examined you.

A. Only from the minute itself.

Q. Judge, you mentioned in your cross examination a dinner given to Judge Gary by the steel manufacturers. I think you gave the date as in October, 1908?

A. 1909.

Q. Was it 1909?

A. Yes.

Q. The remarks of Judge Gary at that dinner have already been put in evidence, and I desire now to put in the address of the presiding officer, Willis L. King, and also the presentation address of Mr. Charles M. Schwab. Please look at this pamphlet I show you and tell me whether or not you are able to identify that publication of the address of Willis L. King?

A. Well, I remember that.

MR. LINDABURY: I offer that in evidence.

MR. DICKINSON: I except to it as irrelevant and incompetent.

(The address referred to was thereupon marked "Defendants' Exhibit (Reed) No. 82, June 18, 1913," and will be found in the volume of exhibits.)

By MR. LINDABURY:

Q. Please look at the presentation address of Mr. Schwab and tell me if you are able to identify that.

A. Yes.

Q. Please look at the picture of the loving cup on a later page and tell me if you identify that.

A. I do. I remember seeing the cup itself.

Q. I call your attention to the signatures to the testimonial on the succeeding pages; do you recall those signatures or those persons as being among those who gave the testimonial?

A. I could not identify the signatures, but a book or something containing pages signed, of which these are evidently a reproduction—I have a copy of this book at home—was handed to Judge Gary that night, and I see many names there that I remember seeing the people. I have not any doubt that is genuine as far as it goes.

By MR. LINDABURY:

Q. When was this book published? You say you have a copy.

A. It was published and distributed by the givers of that dinner, within a month or so after the dinner.

MR. LINDABURY: I also offer in evidence the presentation address of Charles M. Schwab identified by the witness as contained in this publication.

MR. DICKINSON: This is excepted to as irrelevant and incompetent, and as putting into the record matter that manifestly has no bearing on the issues in the case, which will not contribute anything to an elucidation of the questions involved.

(The speech referred to was thereupon marked "Defendants' Exhibit (Reed) No. 83, June 18, 1913," and will be found in the volume of exhibits.)

THE WITNESS: I would like to correct a statement that I made that this publication was made by the givers of the dinner. It was published and sent to everybody present by the Iron Trade Review, as a souvenir.

MR. LINDABURY: Gentlemen, I suppose there could be no objection to putting the rest of the matter just offered from this book now, in connection with Judge Gary's address which was offered a week or two ago, in connection with Judge Gary's examination?

MR. DICKINSON: Are you offering something more, now?

MR. LINDABURY: No.

MR. DICKINSON: You want to attach it to something else?

MR. LINDABURY: On Judge Gary's examination, along with the Gary dinners, I put in his response at this testimonial dinner.

MR. DICKINSON: And now you want to collocate this with that?

MR. LINDABURY: Yes.

MR. DICKINSON: We do not object to that. We do not waive any exception, of course.

MR. LINDABURY: I understand that. It is merely a matter of arrangement. You are excused, Judge Reed, with the thanks of the Court.

HARRY COULBY

a witness called on behalf of the defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. SEVERANCE:

Q. Mr. Coulby, where do you live?

A. Cleveland, Ohio.

Q. What is your business?

A. President of the Pittsburgh Steamship Company.

Q. That is the subsidiary of the Steel Corporation that controls the vessels?

A. Yes, sir.

Q. In general what are your duties in that capacity?

A. President and general manager of the company.

Q. What class of duties do you perform as president and general manager?

A. Executive duties.

Q. Are you in intimate touch with the affairs of the Company, or are you merely a man who has reports made to you from time to time by officials?

A. I am in close touch with the affairs of the company.

Q. Where is the General Office of the Pittsburgh Steamship Company?

A. Duluth.

Q. And where is the principal executive office?

A. In Cleveland.

Q. And that is where you have your office?

A. Yes, sir.

Q. What experience have you had in the vessel business on the Lakes? When did it begin?

A. 1887.

Q. What class of boats did you have to do with then?

A. Wooden steamers and sailing vessels; wooden tow barges.

Q. How continuously since that time have you been in that class of work?

A. Continuously, ever since.

Q. How long have you been president of the Pittsburgh Steamship Company?

A. Since January 1, 1904.

Q. Previous to that time with what concern were you connected as a vessel manager?

A. Pickands, Mather & Company.

Q. What is their business?

A. They are general merchants in iron ore, coal, pig iron—Lake transportation.

Q. Did you, when you were with Pickands, Mather & Company, have to do with the movement of ore on the Lakes?

A. Yes, sir.

Q. How closely have you been informed as to the ore business, that is, the transportation of ore on the Lakes, since 1887?

A. I have been in close touch with it ever since.

Q. Have you been familiar with other fleets of boats and other boats, other than in fleets, that were owned by individuals and other companies?

A. Yes.

Q. All of them?

A. Yes.

Q. Have you made up at my request a list of the boats on the Lakes that are engaged in the ore business?

A. Yes.

Q. From what sources of information did you make up this list?

A. Well, from a number of different sources.

Q. What were they?

A. Government records were used, records in my office of tonnage that we got from the owners of the tonnage, and from the shipbuilders building the vessels, made up in a composite way of all kinds of information that we got in regard to these ships, where they were built and who built them.

Q. You say you got some Government records; what kind of Government records?

A. The Government gets out a Blue Book each year of the merchant vessels of the United States, and we used that in compilation of these records, although there are some errors in that book, so that we did not rely upon that entirely.

Q. Well, in giving a list of the boats and their size, where did you get that?

A. That is gotten either from Government records or from the shipbuilders that built the boats. We keep up the records right along of the new tonnage that comes up.

Q. Are you able to state as to whether or not this list that you have so prepared is a correct list?

A. Yes.

Q. Both of the boats and of the tonnage?

A. That is, the capacity.

Q. I meant the capacity.

A. Yes. Of course that capacity is somewhat estimated because of the varying conditions of water.

Q. How is it estimated? I see the paper says "Gross tons capacity at 19 feet draft." Explain what that means.

A. That means 19 feet, what the boats will carry on 19 feet draft through the Soo Canal.

Q. Are all the estimates made on the same basis?

A. All are made on the same basis.

Q. This information that you secured from the Government register, did you check that yourself?

A. Yes.

Q. Have you personally prepared and checked those statistics on this exhibit?

A. Yes.

MR. SEVERANCE: I would like to have this marked.

(Here the paper was marked Defendants' Exhibit No. 84.)

By MR. SEVERANCE:

Q. I show you Exhibit No. 84, and will ask you if that is the list you have just been describing?

A. Yes; that is it.

Q. Consisting of how many sheets? Are they numbered?

A. No, I don't think so, but we will call it 14, with the outside leaf.

Q. Thirteen besides the recapitulation?

A. Yes.

Q. This exhibit, among other things, shows the parties that are stated to control the ships?

A. Yes.

Q. Do you know of your own knowledge that those various boats shown on the exhibit are controlled by the parties that the exhibit states control them?

A. They are what are generally known in the trade as boats controlled by these people.

Q. What do you mean by that? Take for instance the Cambria Steel Company. Here are a certain number of vessels, six in number, with a certain capacity. What information have you as to whether those boats are Cambria Steel Company boats?

A. Those boats are operated by M. A. Hanna & Company and they all carry Cambria Steel Company ore.

Q. You know that, do you?

A. Yes.

Q. You have also thirteen vessels listed as "Cleveland Cliffs Iron Company."

A. They control those boats and manage them.

Q. You know that?

A. Yes.

Q. Have you the same knowledge with reference to the various fleets shown here?

A. Yes.

Q. Are all these boats shown on the exhibit engaged in the ore trade?

A. Yes.

Q. Regularly or otherwise?

A. Well, pretty regularly, when they can get business to do.

Q. They are equipped to carry ore, are they?

A. Yes; ore, coal and grain.

MR. SEVERANCE: I will offer Exhibit 84 in evidence.

MR. DICKINSON: Would you mind my asking a few questions right on that line?

MR. SEVERANCE: No.

By MR. DICKINSON:

Q. These boats of the Corporation—do they carry anything except for the Corporation?

A. Except Corporation ores?

Q. Yes.

A. We carry some outside ore, and carry outside coal sometimes.

Q. Anything except ore and coal?

A. No, we do not carry any grain.

Q. Some of these other boats carry things other than coal and ore, do they not?

A. Grain.

Q. Some carry lumber?

A. No.

Q. This table does not show which of those which are owned by concerns other than the Corporation carry grain and which do not, does it?

A. No, though all of them are available for grain. Our boats could carry grain if we wanted to put them in the trade.

Q. But you do not do it?

A. No, it is not our policy to carry grain.

Q. But these others do?

A. Yes.

Q. This statement does not show a comparison between boats of the United States Steel Corporation engaged exclusively in carrying ore and coal, as against independent boats exclusively engaged in carrying ore and coal?

A. I do not get your question? What do you mean by comparison?

Q. It includes grain also?

A. Yes.

Q. But you have no table contrasting ore and coal carrying boats, and ore, coal and grain carrying boats?

A. There are no boats classed as ore and coal, and ore, coal and grain carrying boats. They can always carry grain as well as ore and coal. Ours do not carry grain.

Q. Yours carry ore and coal alone?

A. Well, they have carried grain.

Q. Regularly? How long since they have carried it?

A. I do not think they have carried any grain since I have been president of the company, but they did prior to that time.

Q. And you have been president since 1904?

A. I have been president since 1904.

MR. SEVERANCE: Perhaps I had better go a little further on that line.

By MR. SEVERANCE:

Q. Are these boats that you have on this exhibit as controlled by various ore interests engaged in the grain traffic, too?

A. Sometimes they carry grain in the fall of the year.

Q. And the so-called "wild boats," that is, boats owned by independent vessel owners, they sometimes carry grain in the fall of the year?

A. Yes.

Q. What time does the grain movement start?

A. About the 1st or the 15th of October; it depends on the season somewhat.

Q. And up to the 1st or the 15th of October, during the season, what class of traffic coming down the Lakes is carried by these boats on this list?

A. Mostly ore.

Q. And after the 15th of October do they carry some ore and some grain or all grain?

A. Some ore and some grain.

Q. And they are all available for ore tonnage at any time?

A. Yes.

MR. DICKINSON: I would like to ask one more question.

By MR. DICKINSON:

Q. Have you any statistics showing the proportion of grain carried by any of these boats?

A. No.

MR. SEVERANCE: I will tell you; we will follow this up by statistics showing the amount of the ore movement in vessels of the Corporation and the other vessels, which will supplement what this shows.

MR. DICKINSON: I am only speaking of this. We will except to this exhibit on the ground that it is a statement as of the year 1912 and not any period prior to the time of the bringing of this suit, and we object to it as being irrelevant.

MR. SEVERANCE: If you want to withdraw your objection for a moment, I have a question to ask him which will show the change from 1911 to 1912, and perhaps you will not make that objection. I was going to follow this up by doing that, but I do not care which way it is; you can leave it in if you like.

(The list was thereupon marked "Defendants' Exhibit (Coulby) No. 84, June 18, 1913," and will be found in the volume of exhibits.)

Q. Mr. Coulby, will you take that exhibit and explain to me what if any changes there were in these fleets between the years 1911, the season of 1911, which begins in May, does it not?

A. Yes.

Q. And the season of 1912?

A. Yes, sir. On page 2 of the exhibit the steamer "Harvester," of the International Harvester Company, she came out in the spring of 1911.

Q. The steamer "Harvester," a 10,000 ton ship of the International Harvester Company, came out when?

A. In the spring of 1911 she started doing business.

Q. There is no change between 1911 and 1912?

A. In that paper?

Q. I want to know what boats there are on this list, if any, that were in business during the season of 1912 that were not in business during the season of 1911?

A. Take the Jones & Laughlin, the "Walters" she was built to replace one they lost in 1910. She came out late in 1911 or 1912. She was built to replace the Moreland that was lost.

Q. How did she compare in size with the one that was lost?

A. She was just the same size.

Q. And she was lost in 1910?

A. 1910, the fall.

Q. What other changes were there between 1911 and 1912?

A. On the Snyder fleet, the "Schoonmaker" and the "W. P. Snyder, Jr." came out last spring.

Q. 1912?

A. Yes.

Q. Were there any other changes in these various fleets between the season of 1911 and the season of 1912?

A. I do not think there were. I do not recall any.

Q. Look it over and see if there are any. Are there any new Pittsburgh Steamship boats launched since 1911, shown upon this list?

A. No, sir.

Q. I see on this table, in addition to the steamers of the Steel Corporation there are a large number of barges. Do they carry any power?

A. They carry power for handling their towing machines, pumps, steering gear and windlass.

Q. Do they have any power of propulsion?

A. No; not for propulsion.

MR. DICKINSON: I want to object to that portion of it which embraces the period of 1911 transpiring after the filing of the suit in this cause as to relevance.

MR. SEVERANCE: That is the boat that he said came out in the fall of 1911? He said there was one boat.

THE WITNESS: That is the "Harvester" and "Schoonmaker" and the "W. P. Snyder, Jr."

Q. When was it that the Harvester came out? You said the spring of 1911, didn't you?

A. She came out some time in 1911.

Q. When did the Moreland come out?

A. The Moreland was lost in 1910.

Q. What was the name of the boat that took her place?

A. The Walters.

Q. She came out in the fall of 1911?

A. Some time late in 1911.

MR. SEVERANCE: I wish to have this paper marked.

(The paper referred to was marked "Defendants' Exhibit No. 85.")

By MR. SEVERANCE:

Q. Mr. Coulby, I show you Defendants' Exhibit 85 for identification, which is entitled "Record of ore loading docks on the Great Lakes." You did not make that exhibit, Mr. Coulby, yourself?

A. No, sir.

Q. It was made by the chief engineer of the Iron Range Road?

A. Yes.

Q. Are you familiar with the fact that docks are located at the places stated on that exhibit?

A. Yes, except these two Canadian docks, I have got to take hearsay on that. I never saw them, but I have been on all the other docks.

Q. You would not be able to testify of your own knowledge, however, as to all these dimensions that are stated?

A. No.

Q. When did that Superior dock of the Soo Road, as shown on that exhibit, go into operation?

A. I think they handled a little ore over there in 1911 on the Cuyuna Range.

Q. And a little more in 1912?

A. Yes.

Q. What other dock is there from which ore shipments are made from the Cuyuna Range?

A. The Northern Pacific are building a dock, but I understand it will not be done until some time this year.

Q. Is that shown on this list?

A. Yes.

Q. It is not yet completed?

A. It is marked here "Ready July 15, 1913."

Q. Outside of this Superior dock on the Soo Road, and the Northern Pacific dock, were all the docks shown there on the American side of the Lakes and excluding the two Canadian docks in existence and doing business during the season of 1911?

A. There is one dock here, the Duluth & Iron Range dock, that was not.

Q. Which dock is that?

A. Dock No. 6.

Q. When was that built?

A. No, sir; it is Dock No. 1. They are building that now. I think it was finished last year.

Q. Which one do you mean? No. 1?

A. They call it No. 1.

Q. Were the other Iron Range docks in existence?

A. Yes.

Q. They have been in existence for a good many years, have they not?

A. Yes.

Q. How about the Missabe docks?

A. They have been in commission a number of years.

Q. How about the docks shown here on the lines of other roads, the Duluth, South Shore & Atlantic, the Lake Erie and Ishpeming, and the Chicago, Milwaukee & St. Paul, the Great Northern and the Chicago & Northwestern?

A. They have been in operation a number of years.

Q. Previous to 1911?

A. Yes, sir.

Q. From which ones of these docks has the Pittsburgh Steamship Company loaded ore? Perhaps it would be easier to say which ones it has not loaded ore from?

A. I think they have loaded ore from all of them except the Soo Line at Superior and the Algoma Central dock at Michipicoten and the Canadian Northern dock at Key Harbor and the Lake Superior and Ishpeming at Marquette. I do not think we have loaded any ore out of that dock until 1911.

Q. Are you loading from that dock this year?

A. We are loading some from that dock this year.

MR. SEVERANCE: I will offer this in evidence with the understanding that you may check it up, and if you desire to have someone call attention to the details, that may be done.

MR. DICKINSON: We will not make any exception now, but we will reserve our exception.

(The table referred to was thereupon marked "Defendants' Exhibit (Coulby) No. 85, June 18, 1913," and will be found in the volume of Exhibits.)

By MR. SEVERANCE:

Q. Mr. Coulby, do you keep in your office records of the loading of ore by the Pittsburgh Steamship Company received from the various railroads at the head of the Lakes?

A. Yes, sir.

Q. By the head of the Lakes I mean on Lake Superior.

A. All the Lakes, the upper Lakes; that is, Lake Michigan and Lake Superior.

Q. And have you had those figures in your office regularly since you have been president of the Pittsburgh Steamship Company?

A. Yes.

Q. Do you know whether the figures that you have in your office are correct?

A. Yes, sir.

MR. SEVERANCE: I hand the reporter a table which I ask to have marked.

(The table was marked "Defendants' Exhibit No. 86.")

By MR. SEVERANCE:

Q. From what sources are these records made that you have in your office? Where do you get the figures?

A. Where do we get the information?

Q. Yes.

A. From the bills of lading issued by the railroads shipping the ore out to the upper Lake ports.

Q. You mean shipping the ore to the ports?

A. Yes.

Q. From bills of lading of the railroads delivering the ore to the docks from which it is taken to the Pittsburgh Steamship Company?

A. The bills of lading made by the railroads for the boat; when they deliver the ore to the boat.

MR. DICKINSON: I suppose that word Missabe there means the Duluth, Missabe & Northern?

THE WITNESS: Yes, it does.

MR. DICKINSON: And Iron Range means Duluth & Iron Range?

THE WITNESS: Duluth, Missabe & Northern, and the Two Harbors is the Duluth & Iron Range.

MR. SEVERANCE: I will prove those contractions.

MR. DICKINSON: I at first misunderstood. I thought it meant the sections.

THE WITNESS: That is what we call them.

By MR. SEVERANCE:

Q. Who prepared this exhibit from the books? Did you do that?

A. I went over it.

Q. You checked it from time to time?

A. I checked it against the books.

Q. Is it correct as shown by the records in your office?

A. Yes, sir.

Q. On this Exhibit 86 there is one column of figures headed "Masaba." What does that mean?

A. It means the docks of the Duluth, Missabe & Northern Railway at Duluth.

Q. And there is also one headed "Iron Range." What does that mean?

A. Docks of the Duluth & Iron Range Railroad at Two Harbors.

Q. And Great Northern?

A. That means the ore dock belonging to the Great Northern Railway at Allouez Bay.

Q. "C. & N. W." That means Chicago & North Western?

A. Chicago & North Western docks at Escanaba and Ashland.

Q. "Wisconsin Central."

A. That is called the Soo Line now. That is their dock at Ashland.

Q. The Wisconsin Central is now under lease to the Soo?

A. Yes; it will be called the Soo Line.

Q. And on this other exhibit it is called the Minneapolis, St. Paul & Sault Ste. Marie; that is the same thing that is here called the Wisconsin Central?

A. Yes.

Q. The "D. S. S. & A."

A. That is the Duluth, South Shore & Atlantic Railway's ore dock at Marquette.

Q. The "C. M. & St. P."

A. That is the Chicago, Milwaukee & St. Paul.

Q. Where is their dock?

A. At Escanaba.

Q. There is a column here on Exhibit No. 86 headed "Total Corporation Railroads" and another headed "Total Outside Railroads." What railroads are included in the "Total Corporation Railroads?"

A. The Duluth, Missabe & Northern at Duluth, and the Duluth & Iron Range Railroad at Two Harbors.

Q. Those are the only two roads that are controlled by the Steel Corporation at the head of the Lakes?

A. Yes, sir.

Q. And are the figures shown for the respective years under that head a correct showing of the amount of ore taken

by the Pittsburgh Steamship Company and handled through its organization from those two roads?

A. Yes, sir.

Q. And what do the words "Total Outside Railroads" mean? Does that mean all the other ones on this exhibit?

A. All the other railroads on this exhibit.

Q. Which are not controlled by the Corporation?

A. Which are not controlled by the Corporation.

Q. And do the figures set under that heading indicate the ore that is moved for the Corporation up to the docks by these outside railroads?

A. Yes, sir.

Q. Does the Pittsburgh Steamship Company move all of the ore shown in th - table in its own vessels?

A. No, sir.

Q. In what way do you have to do with the ore that is not moved in the Pittsburgh Steamship vessels?

A. We charter what outside ships are necessary, attend to their loading and unloading, and pay the freight.

Q. So that you have the same statistics as to them that you do as to the Pittsburgh Steamship Company's vessels?

A. Absolutely the same.

MR. SEVERANCE: I will offer in evidence Exhibit No. 86.

(The statement was thereupon marked "Defendants' Exhibit (Coulby) No. 86, June 18, 1913," and will be found in the volume of exhibits.)

By MR. SEVERANCE:

Q. You say, with reference to Exhibit No. 86, that you have checked those figures yourself?

A. Yes, sir.

Q. And you are satisfied from your knowledge of the movement of the traffic that they are substantially correct?

A. Yes, sir.

Q. You are in touch with it from day to day?

A. Yes, sir.

(Whereupon an adjournment was taken until to-morrow, Thursday, June 19, 1913, at 10:30 o'clock a. m.)

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 19[redacted] 1919

No. [redacted] 1[redacted]6

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

UNITED STATES STEEL CORPORATION ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

VOLUME 15.

DEFENDANTS' TESTIMONY.

FILED MAY 12, 1916.

VOLUME XV.

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*Erratum. On page 5759, line 19, "Defendants' Exhibit No. 87" should read "Defendants' Exhibit No. 87 and Defendants' Exhibit No. 87a," etc.

EIGHTIETH DAY.

EMPIRE BUILDING,
71 BROADWAY, NEW YORK CITY,

THURSDAY, JUNE 19TH, 1913.

Before SPECIAL EXAMINER HENRY P. BROWN.

Present on behalf of the United States, MR. DICKINSON and MR. COLTON.

Present on behalf of the Defendants, MR. LINDABURY, MR. SEVERANCE, MR. BOLLING and MR. REED.

MR. LINDABURY: I desire to offer from the proceedings of the complimentary dinner tendered to Judge Gary, October 15th, 1909, in addition to what I offered yesterday, the address of T. J. Drummond, and also the text of the testimonial itself.

MR. DICKINSON: That is objected to as irrelevant and as encumbering the record with immaterial matter having no bearing on the issues.

(The portions of the proceedings referred to were thereupon marked "Defendants' Exhibits Nos. 87, June 19, 1913," and will be found in the volume of exhibits.) Ex. of 87a

HARRY COULBY,

the witness under examination at the taking of adjournment resumed the stand.

DIRECT EXAMINATION (Continued),

By MR. SEVERANCE:

Q. Reverting to Exhibit 85, I want to ask you a few questions at request of counsel. From what ranges, that is in what States are the mines from which shipments are made over the Chicago & Northerwestern Railroad docks at Escanaba and Ashland?

A. From the Michigan mines.

Q. And Wisconsin?

A. And Wisconsin mines.

Q. They are not from the Minnesota mines?

A. No, not from the Minnesota mines.

Q. The Duluth & Iron Range shipments are entirely from Minnesota mines?

A. Entirely from Minnesota mines.

Q. And also the Duluth, Missabe & Northern?

A. Only from Minnesota.

Q. And the Great Northern?

A. Minnesota.

Q. The Iron Range, the Missabe and the Great Northern come from what ranges?

A. The Iron Range, from the Vermillion and Mesabi Ranges; the Duluth, Missabe & Northern from the Mesabi Range; and the Great Northern from the Mesabi Range.

Q. The Northern Pacific dock, that is not in operation?

A. No.

Q. They are not transporting ores from the Cuyuna Range?

A. Not that I know of.

Q. The Duluth, South Shore & Atlantic do not handle Minnesota ore?

A. No, that is from the Marquette Range.

Q. The Lake Superior & Ishpeming?

A. No.

Q. The Minneapolis, St. Paul & Sault Ste. Marie do not handle Minnesota ores?

A. No.

Q. Except the Superior dock?

A. It ships from the Cuyuna Range.

Q. And the Ashland dock?

A. The Gogebic Range.

Q. Do you know whether there was any ore shipped from the Cuyuna Range over the Soo Road prior to October 26, 1911? Do you know the exact date they began?

A. I do not.

Q. And the Chicago, Milwaukee & St. Paul docks at Es-

canaba, Judge Dickinson wanted me to ask when those docks were built, if you know.

A. I don't recall the date; they have been built for a number of years.

Q. Were they built previous to October, 1911?

A. I think they were; they ship from the Menominee Range.

Q. And the Algoma Central & Hudson Bay and the Canadian Northern handle Canadian ore?

A. Yes.

Q. Your boats do not handle that?

A. No.

MR. DICKINSON: While we are on this, we except to so much of Defendants' Exhibit 85 as embraces that period following the filing of the petition in this case, and so much of the testimony of the witness as is based thereon, as being irrelevant.

By MR. SEVERANCE:

Q. Calling your attention to Defendant's Exhibit 84, in the recapitulation there are stated to be sixteen other ore producing or consuming interests with eighty vessels, and with tonnages given. Will you run through this exhibit and name the interests that you treat in this exhibit as ore producing or consuming interests outside of the United States Steel Corporation?

A. Bourne, Fuller Company.

Q. What is the Bourne, Fuller Company?

A. They operate a blast furnace in Cleveland.

Q. That is a firm with headquarters at Cleveland?

A. Yes.

Q. What is the next one?

A. Harvey H. Brown & Company, of Cleveland.

Q. What do they do?

A. They operate a blast furnace down at Sharon, called the Stewart Iron Company.

Q. What is the next?

A. The Cambria Steel Company.

Q. That has heretofore been described. What is the next?

A. The Cleveland Cliffs Iron Company.

Q. Who are they?

A. That is a large ore producing concern with headquarters in Cleveland, owning mines on the Marquette, Menominee and Gogebic Ranges, and I think also on the Mesabi Range.

Q. Are they manufacturers or sellers of ore?

A. They are sellers; probably one of the largest independent ore producers.

Q. What is the next?

A. Corrigan, McKinney & Company.

Q. Who are they?

A. A firm with headquarters in Cleveland; very large producers of ore, and also large consumers. They are now building a steel works to consume their ore, I think.

Q. Are they sellers of ore as well as consumers?

A. Yes.

Q. What is the next?

A. The International Harvester Company.

Q. Where does their ore move to?

A. Their ore moves to their works in Chicago. They own their own ore, and consume ore; they own part of their own ore supply.

Q. What is the next?

A. The Inland Steel Company.

Q. Where does that ore go?

A. To the lower end of Lake Michigan, near South Chicago.

Q. Is that a consuming company.

A. A consuming company, and they also produce some ore themselves.

Q. Who is the next?

A. Jones & Laughlin Company.

Q. That has been well described heretofore. What is the next?

A. LaBelle Iron Works, of Wheeling.

Q. Is that a producer and consumer both?

A. I think they produce part of their ore supply; they are large consumers of ore.

Q. What is the next?

A. M. A. Hanna & Company.

Q. What is their business?

A. They are producers of ore, and also consumers of ore, operating a good many blast furnaces.

Q. What is the next?

A. Pickands, Mather & Company; they are large producers and also consumers of ore.

Q. The Republic Iron & Steel Company has been well described. Are they both producers and consumers?

A. Yes.

Q. What is the next?

A. Rogers, Brown & Company.

Q. Who are they?

A. They are large producers of ore, and they are large consumers, having blast furnaces at different places in the western country.

Q. What is the next?

A. The Wheeling Steel & Iron Company.

Q. What are they?

A. They are large consumers of ore. I do not know whether they own ore mines or not; they are consumers.

Q. Take the next one?

A. Wickwire Steel Company. They have some mines and also have blast furnaces; they are both producers and consumers of ore. W. P. Snyder & Co.

Q. Who are they?

A. A large producer of ore, both for themselves and also large consumers.

Q. You have a large number of steamers under the head of independent lake vessels for the ore trade for the year 1912, and then follows a list of different owners or parties controlling these. Are these vessels all engaged in the ore trade under charter?

A. They are all available for the ore trade, most all of them are engaged in the ore trade.

Q. Those are the vessels that you stated yesterday were at times engaged in hauling grain?

A. Yes.

MR. DICKINSON: The testimony based on Exhibit 84 is objected to as irrelevant and also so much of said exhibit as refers to the period after the filing of the bill and the testimony based thereon is objected to as irrelevant.

By MR. SEVERANCE:

Q. Mr. Coulby, will you state whether or not since April, 1901, the date of the organization of the Steel Corporation, there has at all times been a sufficient amount of tonnage available for ore shipments on the lakes, to move all the ore that was offered?

A. Yes, sir.

Q. What is the fact as to whether or not during a large part of the time there has been a surplus tonnage?

A. There has been a surplus of tonnage nearly all the time.

Q. And have any of the boats engaged in the ore traffic, that is, that have participated in the ore traffic, been at times tied up for lack of business?

A. Yes, sir.

Q. Large or small numbers of them?

A. A large number at times.

By MR. DICKINSON:

Q. What boats are you speaking of; do you speak of the Corporation's or the others?

A. The independent boats.

By MR. SEVERANCE:

Q. Mr. Coulby, how are the rates made for transportation by vessel on the Lakes, ore transportation?

MR. DICKINSON: Objected to as irrelevant.

A. The way the business is done——

By MR. SEVERANCE:

Q. (Interposing) I am covering the entire period from 1901 down.

A. There has not been any change in the way the rates are made.

Q. Yes, go ahead.

A. The ore selling movement on the Great Lakes is a sea-

sonal one. It is done sometimes within a very few days when it starts, and after the ore has been sold the ore sellers generally come in the market to charter ships to transport the ore they have sold, and I don't know just how it starts, but we generally hear of M. A. Hanna or some of the large independents having chartered a block of tonnage; a little while later we will hear somebody else has done the same thing, and then generally all the ore shippers come in and charter whatever tonnage they require at the rate that may have been established.

Q. Are those rates established by any agreement between vessel owners so far as you know?

A. No, sir.

Q. Are the rates established in the way you have stated?

A. Yes, sir.

Q. Does the Pittsburgh Steamship Company or the United States Steel Corporation have anything to do with the establishment of the rates?

A. No, sir.

Q. And how are rates that are paid by the Pittsburgh Steamship Company or the United States Steel Corporation interests for the transportation of ore other than that carried by the Pittsburgh Steamship Company, arrived at; how do you get your rates that you pay?

A. Ever since I have been with the Pittsburgh Steamship Company we have always waited until such time as the rate has been established by the other ore shippers, and then we have stepped in and taken what tonnage we thought we required at those established rates. I think I can say positively without exception that the vesselmen have come into my office and stated——

Mr. Dickinson: Objected to as hearsay.

The Witness: (Continuing) Have come into my office to state to me that they have already taken tonnage from the other independent shippers at whatever the rate has been fixed, and asked us to remember them when we made our charters; they were willing to take our tonnage at the same rate.

Q. Are the rates that you pay as a rule the same through the shipping season, or do they fluctuate?

A. They do not fluctuate very much, not so much as they used to. Sometimes in the fall the rates go up when the grain begins to come into the market, but they are fairly steady.

Q. What is the advantage to ore consuming or producing interests of having their own or a portion of their own tonnage?

A. The advantage to the ore producing interests is the same as any large dry goods store having its own transportation, so that you can insure a regular schedule movement of your commodity, which is the very essence of transportation.

Q. Do the other steel makers that you have testified to have a certain amount of tonnage?

A. Yes.

Q. Has or has not the Pittsburgh Steamship Company ever had tonnage enough to carry all the ore required by the Corporation furnaces, or have they always chartered a certain amount?

A. They have always chartered a certain amount. Of course, when the movement is below normal they do not charter as much, but it has been the policy that they do not exceed over 60 to 66 per cent. of the tonnage required to move the ore.

MR. DICKINSON: What does not exceed?

THE WITNESS: The tonnage that they own.

MR. SEVERANCE: He means they only own boats enough to carry 66 per cent. of the movement in a normal year.

By MR. SEVERANCE:

Q. And you charter outside tonnage for the balance?

A. Yes.

Q. Do you charter that tonnage for the entire season; that is, do you take a charter of a boat or a fleet of boats for the entire season, or do you do that as to part of the outside tonnage and charter wild vessels for a portion?

A. We take a certain proportion of the excess that we require for the season running to November 1st, and then we leave a certain proportion of our requirements to be picked

up daily or weekly as we may require it, so as to make it flexible enough to move the schedule. In other words, we take the independent vessel owners and give them a block of tonnage to move in equal amounts monthly during the season of navigation up to November 1st.

Q. What is the season of navigation on the Lakes ordinarily?

A. It varies, of course. We figure the ore-moving season from about the 1st of May to some time in the early days of November.

Q. And sometimes you move ore later than the early days of November?

A. Sometimes we do, but we try to get the ore cleaned up early in November.

Q. Do some of the other ore shippers move ore up to December?

A. Sometimes late in November.

Q. Is the ore at times moved earlier than May 1st?

A. Sometimes, if navigation opens earlier.

Q. How is the practice in handling ore over the docks, as to the time required to load or unload vessels, as compared to what it was previous to 1901?

A. Do you mean the loading docks?

Q. Both the loading and unloading.

A. There has not been very much change in the loading docks. The ore is all loaded by gravity through pockets, and there has not been very much change; but at the unloading docks there has been a marked and decided improvement.

Q. In what way?

A. Prior to 1901 all the ore that was unloaded at the ore docks was shoveled into buckets.

Q. By hand?

A. By hand. In the late nineties, I think, the Carnegie Steel Company was entitled to the credit for developing the automatic unloader. They got hold of a fellow that started with what was called the Hulett machine, at Conneaut, with a rigid arm and clam shell buckets, that will automatically go and scoop the ore out of the boats without the necessity for manual labor to shovel.

Q. Has that been improved from time to time?

A. They spent a great deal of money on it and they improved it and demonstrated that it was going to be a practical operation.

Q. About what year did the Hulett machine get to what you might call a perfected state?

A. Along in, probably, 1902 or 1903.

Q. Since the Corporation was formed?

A. Since the Corporation was formed. Other inventors came along with similar machines, until now machinery has been developed, the Hulett machine, with a fifteen-ton bucket, operated electrically, and the Brown machine, operated electrically and automatically; so that now we unload with great rapidity. I think the record is two hours and fifty minutes for a boat of about 10,000 tons of ore.

MR. DICKINSON: That is objected to as irrelevant.

By MR. SEVERANCE:

Q. Were the railroad docks equipped with these perfected machines sooner or later than the docks of the Steel Corporation?

A. Later. They followed.

Q. How long does it take to load a 10,000-ton boat now at the head of the Lakes, at the docks?

MR. DICKINSON: That is objected to as irrelevant.

THE WITNESS: That depends. The record is 25 minutes for about a 9,000-ton boat. I should say the average time is six or seven hours.

By MR. SEVERANCE:

Q. Has the average capacity of the ships of the Pittsburgh Steamship Company been enlarged or diminished in the last ten years?

A. It has been enlarged.

Q. What is the capacity of the newer ships?

MR. DICKINSON: That is objected to as irrelevant.

THE WITNESS: About 11,000 gross tons; 11,000 to 12,000 gross tons.

By Mr. Severance:

Q. In 1901 about what was the average capacity of the ships?

A. The largest ships then were about 7,500 tons.

Q. And they ranged down to what?

A. About 3,000 tons.

Q. Mr. Coulby, have you a memorandum kept by you and kept up from time to time in your office, showing the amount of ore moved in each year for the various Corporation furnaces by the Pittsburgh Steamship Company vessels, contract vessels such as you have described and the wild vessels, and the total?

A. Yes, sir.

Q. Are these figures correct?

A. Yes, sir.

Q. I see that for two years, 1902 and 1903, the figures antedate your presidency of the company?

A. Yes, sir.

Q. They were copied from the record you found in your office?

A. Yes, sir.

Q. I will ask you to refresh your recollection by this memorandum——

Mr. Dickinson: I am not going to object to the competency of it. If you offer it, I will object to it as irrelevant, and let it go in, as an exhibit, to save time.

Mr. Severance: I was going to have him read it. I was just going to let it be put right in the record at this point. It can go in as an exhibit, if you prefer.

By Mr. Severance:

Q. By refreshing your recollection by this memorandum, Mr. Coulby, are you able to state the amount of ore shipped in the vessels of the Pittsburgh Steamship Company, the contract vessels and the wild vessels, and the total for each of these years?

A. Yes.

Q. I will ask you to state those figures.

MR. DICKINSON: This is objected to as irrelevant, and also that part of it embracing the period after the filing of the petition is further objected to as irrelevant.

The Witness:

Year	P.S.S. Vessels	Contract Vessels	Wild Vessels	All Vessels
1902	10,787,215	2,347,847	2,895,739	16,030,801
1903	8,885,975	3,662,372	1,163,321	13,711,668
1904	8,463,116	1,952,384	1,741,845	12,157,345
1905	11,345,187	6,966,101	1,282,788	19,594,066
1906	11,369,320	7,687,246	2,047,858	21,104,424
1907	12,685,963	9,372,608	885,993	22,944,564
1908	9,996,824	4,487,829	119,970	14,604,623
1909	12,717,146	5,111,741	3,847,071	21,675,958
1910	13,430,100	5,749,539	2,852,507	22,032,146
1911	14,323,439	367,556	2,877,422	17,568,417
1912	14,617,988	7,847,235	1,771,541	24,236,764

Q. Can you, by refreshing your recollection from the memorandum in front of you, state the total ore shipments on the Great Lakes and the ore moved on account of the furnaces of the Steel Corporation, the amount moved by the Pittsburgh Steamship Company and the percentage of the Steel Corporation ore moved by the Pittsburgh Steamship Company boats, and also the percentage of the total ore movement on the Lakes handled by the Pittsburgh Steamship Company boats.

MR. DICKINSON: How does he get at the percentage?

MR. SEVERANCE: That is a mere computation. You have got the figures in already.

MR. COLTON: I think we have figures in that would check anything that is here.

MR. DICKINSON: Very well; you ask the question and I will put the exception.

By MR. SEVERANCE:

Q. Can you do that?

A. Yes.

Q. Will you please give those figures for the year 1901 to 1912?

MR. DICKINSON: This is excepted to as irrelevant and also that part embracing the period after the filing of the bill is separately excepted to as irrelevant.

THE WITNESS:

Year	Ore Rec'ts Account Corp. Fees	Total Ore Shipments on Great Lakes	Moved by Pgh. S.S. Boats	Per Cent of Corp. Ore Moved by P.S.S.Co. Boats	Per Cent Total Lake Ore Movem't Handled by P. S. S. Co. Boats
1901	11,738,861	20,157,522	8,220,114	70.02	40.78
1902	15,082,506	27,039,059	10,777,636	71.46	39.86
1903	13,298,633	23,049,550	8,885,060	66.81	37.57
1904	11,786,213	21,220,591	8,403,116	71.81	39.87
1905	19,124,469	33,476,904	11,345,187	59.32	33.89
1906	20,648,683	37,513,595	11,309,320	55.06	30.31
1907	22,553,642	41,288,755	12,685,903	56.25	30.72
1908	14,187,262	25,427,094	9,996,388	70.46	39.31
1909	21,423,675	41,683,873	12,717,146	59.36	30.51
1910	21,894,463	42,620,201	13,430,100	61.34	31.51
1911	17,568,417	32,120,411	14,323,439	81.52	44.59
1912	24,102,063	47,435,777	14,617,988	60.65	30.81

By MR. SEVERANCE:

Q. Mr. Coulby, can you, from the memoranda in your possession, give comparative statistics as between April 1, 1901, and April 1, 1913, of the Pittsburgh Steamship Company; that is, as to the number of steamers and barges, the retirements, boats lost, boats acquired and cargo capacity?

A. Yes.

Q. Will you kindly state those figures?

MR. DICKINSON: The same exception as to the last question.

THE WITNESS:

NUMBER OF VESSELS.

	Total April 1, 1901	Retirements Since Sold	Lost	Acquired Since	Total April 1, 1913
Steamers	69	12	5	27	79
Barges	43	20	2	—	21
Total	112*	32	7	27	100

ORE CARGO CAPACITY, SINGLE TRIP.

	Total April 1, 1901	Retirements Sold	Since Lost	Acquired Since	Total April 1, 1913
Steamers	353,659	34,476	19,033	310,200	610,350
Barges	200,902	58,303	10,099	—	132,500
Total	554,561	92,779	29,132	310,200	742,850

AGGREGATE ANNUAL ORE CARGO CAPACITY.

	Total April 1, 1901	Retirements Sold	Since Lost	Acquired Since	Total April 1, 1913
Steamers	7,400,000	755,000	410,000	7,388,000	13,623,000
Barges	3,200,000	920,000	160,000	—	2,120,000
Total	10,600,000	1,675,000	570,000	7,388,000	15,743,000

BOATS SOLD AND LOST SINCE APR. 1, 1901.

SOLD.

Steamers		Barges	
Name	Cargo Capacity	Name	Cargo Capacity
Bartlett	2530	No. 105	3036
Colby	2198	107	3046
Hoyt	2560	109	2080
Palmer	3100	110	2782
Thomsen	2388	111	2799
Wolvin	3100	116	2791
Cambria	3100	117	3200
Masaba	3100	118	3200
Marina	3100	126	2749
Corona	3100	127	2739
Maruba	3100	130	3200
Corsica	3100	131	3200
	34476	132	3200
		133	3200
		134	3200
		201	2255
		202	2203
		Russell	2687
		Whitworth	2736
		Malta	4000
			58303

LOST.

Wilson	2633	No. 129	3099
LaFayette	6600	Madeira	7000
Grecian	3400		10099
Trevor	3500		
Joliet	2900		
	19033		

*Deliverable June, 1913

BOATS ACQUIRED SINCE APR. 1, 1901.

ACQUIRED IN UNION STEEL CO. PURCHASE.

Murphy	7500	
Shaw	7500	
		15,000

CONSTRUCTED.

Gary	10800	
Corey	10800	
Frick	10800	
Perkins	10800	
Morgan	12000	
Ream	12000	
Rogers	12000	
Widener	12000	
Baker	12000	
Phipps	12000	
Cole	12000	
Lynch	12000	
Buffington	12000	
Dinkey	12000	
Morgan, Jr.	12000	
Schiller	12000	
Dickson	12000	
Palmer	12000	
Olcott	12000	
Filbert	12000	
Crawford	12000	
House	12000	
Farrell	12000	
Roberts	12000	
Trimble	*12000	
		295,200
		310,200

Acquired	Steamers	Barges	Total
Bessemer	25	31	56
Minnesota	12	10	22
American	12	—	12
Pittsburg	11	2	13
National	5	—	5
Mutual	4	—	4
	69	43	112*

BOATS SOLD AND LOST SINCE APR. 1, 1901.

SOLD.

STEAMERS

Name	Cargo Capacity	Date	
** Bartlett	2530	April,	1905
** Colby	2198	"	"
** Hoyt	2560	"	"
a Palmer	3100	"	1909
** Thomson	2388	"	1905
c Wolvin	3100	"	1909
c Cambria	3100	"	1910
e Masaba	3100	Feby.,	1911
e Marina	3100	"	"
e Corona	3100	"	"
e Maruba	3100	June,	1912
e Corsica	3100	"	"
	34476		

b To Baltimore & Boston Bge. Co.
** " Capt. Benj. Boutell.
c " Pt. Huron & Duluth S. S. Co.
a " Southern Steamship Co.
d " Great Lakes Eng. Works.
e " American Shipbuilding Co.

BARGES

Name	Cargo Capacity	Date	
** No. 105	3036	April,	1905
** 107	3046	"	"
** 109	2080	"	"
** 110	2782	"	"
b 111	2799	"	"
** 116	2791	"	"
d 117	3200	Oct.,	1909
d 118	3200	"	"
** 126	2749	April,	1905
b 127	2739	"	"
d 130	3200	Oct.,	1909
d 131	3200	"	"
d 132	3200	"	"
d 133	3200	"	"
d 134	3206	"	"
b 201	2255	April,	1905
b 202	2203	"	"
** Russell	2687	"	"
** Whitworth	2736	"	"
e Malta	4000	June,	1912
	58303		

LOST.

Wilson	2633	June 7,	1902
LaFayette	6600	Nov. 28,	1905
Grecian	3400	June 15,	1906
Trevor	3500	Oct. 11,	1909
Joliet	2800	Sept. 22,	1911
	18933		

No. 129	3099	Oct. 13,	1902
Nov. 28, 1905 Madeira	7000		
	10099		

BOATS ACQUIRED SINCE APRIL 1, 1901.

Acquired in Union Steel Purchase:	Spring,	1903	Murphy	7500	
	"	"	Shaw	7500	
				——	15,000
Constructed:	May,	1905	Gary	10800	
	Aug.,	"	Corey	10800	
	Sept.,	"	Frick	10800	
	July,	"	Perkins	10800	
	June,	1906	Morgan	12000	
	Sept.,	"	Ream	12000	
	July,	"	Rogers	12000	
	Nov.,	"	Widener	12000	
	Aug.,	1907	Baker	12000	
	June,	"	Phipps	12000	
	May,	"	Cole	12000	
	July,	"	Lynch	12000	
	June,	1909	Buffington	12000	
	Apr.,	"	Dinkey	12000	
	Apr.,	1910	Morgan, Jr.	12000	
	Apr.,	"	Schiller	12000	
	Oct.,	"	Dickson	12000	
	Sept.,	"	Olcott	12000	
	Apr.,	1911	Palmer	12000	
	Feb.,	"	Filbert	12000	
	"	"	Crawford	12000	
	"	"	House	12000	
	Apr.,	1913	Farrell	12000	
	"	"	Roberts	12000	
			Trimble	*12000	
				——	295,200
					310,200

*Deliverable June, 1913.

By MR. SEVERANCE:

Q. How many of those boats that you have now have been acquired since October, 1911?

A. Three.

Q. Name them.

A. The Farrell, Roberts and Trimble.

Q. Did you have the others prior to that time?

A. Yes.

Q. Have any barges been acquired since that time?

A. No, sir.

Q. Then by deducting those three boats we have an exposition of the situation as between April 1st and October 1st, 1911?

A. Yes.

Q. What do you maintain on the boats of the Steamship Company in the way of line guns?

A. We have line guns on every one of them.

Q. What are line guns?

A. A line gun is an instrument for projecting a line ashore or projecting a line to a ship in the water, one of our safety appliances.

Q. How far will they project a line?

A. That depends, of course, altogether on weather conditions and the charge of powder.

Q. Well, between what?

A. Oh, they will go,—with a good charge of powder, with the wind, they would send a line a couple of miles.

MR. DICKINSON: That is objected to as irrelevant.

By MR. SEVERANCE:

Q. What have you in the way of signals on the boats?

MR. DICKINSON: Objected to as irrelevant.

THE WITNESS: Well, we have Costen signals on board the boats for signalling and for sending up distress signals. We carry water lights on board the ship to be used in case a man falls overboard. The light will burn about an hour.

By MR. SEVERANCE:

Q. Have you any submarine signals?

A. We have submarine signals on all our ships.

Q. You stated yesterday that you carried a small amount of ore for persons outside of the Steel Corporation ore. How much of that was there?

A. We have a contract for 300,000 tons of ore that we

carry for the Biwabic Mine. I think that is an inherited contract from one of the companies that went into the formation of the Steel Corporation.

By Mr. Dickinson:

Q. Are you still carrying that?

A. That is practically all we carry on the outside.

By Mr. Severance:

Q. Are you carrying it now?

A. We are carrying it now. I cannot recall how long that contract has to run.

Q. Has it been running ever since you have been connected with the company?

A. Yes.

Q. And does this answer that they have not been carrying for any others apply to the whole length of time?

A. Yes.

Q. Have you carried any for anybody else, so far as you recall?

A. At times for an accommodation we carried cargoes for the other shippers, exchanging tonnage?

Q. That is, exchanging tonnage?

A. Exchanging tonnage, that is all.

Q. And do these statistics that you have given here as to ore moved on account of the Corporation take account of these small tonnages you have spoken of?

A. Yes; it is a small matter, and we have put it all in.

CROSS-EXAMINATION

By Mr. Dickinson:

Q. Has there always been a surplusage of ore boats on the Lakes from 1901 down to 1911?

A. There has always been a surplus of boats for transportation, but at times there has not been a surplus when they have coupled with it storage. What I mean by that is that in the fall of the year I have known them to take boats for carrying grain and delay them four or five days loading them, and five to ten to fifteen days unloading them, and that eats up tonnage very rapidly.

Q. Take the short period that navigation is open, or the period during which ore is handled; has there not been a surplusage of boats at any time from 1901 down to 1911 actually available?

A. I think there has been for a large part of that period a surplus of tonnage.

Q. You were connected with Pickands, Mather & Company?

A. Yes.

Q. How long did you continue your connection with them?

A. I started in with them in 1886, and I have worked up to be a partner with them, and I am still a partner in the business.

Q. And have been all the time?

A. I have not been a partner all the time.

Q. When were you first financially interested in it?

A. I think some time in the late nineties.

Q. And since that?

A. I have been a partner.

Q. Have they been large carriers of ore on the Lakes?

A. Yes; they carry quite a good deal of ore.

Q. Throughout that whole period?

A. It has been growing larger all the time.

Q. Some for themselves and some for others?

A. Yes, sir.

Q. They have held themselves out in the trade as carrying for others?

A. Yes.

MR. SEVERANCE: You don't mean by that, Judge, to ask if they are common carriers?

MR. DICKINSON: No, I am asking if they held themselves out to carry ore and have been carrying it during that period for others than themselves.

THE WITNESS: Yes.

By MR. DICKINSON:

Q. They are among the independents that you speak of?

A. Yes, sir.

Q. I believe you stated the independents fixed the rates

and then afterwards whatever was charged by your company was at this same rate?

A. Yes.

By Mr. Severance:

Q. Do Pickands, Mather & Company fix the rate?

A. Oh, no.

By Mr. Dickinson:

Q. You do not mean that you did not take part in it?

A. I do not remember since 1904 that Pickands, Mather & Company fixed the rates.

Q. When you said the independents, they were among the independents, were they not?

A. They are one of the independents.

Q. The independents together fix it?

A. No.

Q. Who did do it then?

A. One independent of the other, but never together.

Q. But they all had the same rate?

A. They would all eventually have the same rate.

Q. And Pickands, Mather & Company had the same rate as the others?

A. When they got through; they followed the others.

By Mr. Severance:

Q. You answered to Judge Dickinson that they held themselves out as carriers of ore. Did you mean by that answer that they were common carriers, or that any of these carriers were common carriers?

Mr. Dickinson: I object to that unless he explains what he means by common carrier.

The Witness: There are none of them common carriers in that sense of the word.

By Mr. Severance:

Q. By holding themselves out you mean they were taking ore for transportation under special charter?

A. Yes.

By Mr. Dickinson:

Q. What do you mean by common carriers, Mr. Coulby?

A. Upon the Lakes we have always called a common carrier a water carrier that came within the purview of the Interstate Commerce Commission, the Lake lines.

Q. The Lake lines?

A. The railroad lines.

Q. And they carried ore, did they?

A. The railroad lines?

Q. Yes.

A. No, they cannot carry ore. They take package freight and grain.

Q. But Pickands, Mather & Company, it was understood they were in that business?

A. Yes.

Q. And carrying for other people and charging for it?

A. If they wanted any tonnage for their ships.

By Mr. Severance:

Q. You spoke of the other lines, the railroad lines, carrying grain; what lines did you have in mind?

A. Lake boats controlled by the Pennsylvania Railroad, the New York Central, the Erie, the Lehigh Valley.

Mr. Dickinson: I want to enter an exception to Defendants' Exhibit 86 as being irrelevant, and an additional exception to so much of it as covers a period subsequent to the filing of the bill as irrelevant.

THOMAS LYNCH,

a witness called on behalf of the Defendants, having been duly sworn, testified as follows:

DIRECT EXAMINATION,

By Mr. Reed:

Q. Where do you live?

A. Greensburg, Pa.

Q. What is your present occupation?

A. I am president of the H. C. Frick Coke Company, and

some other coal and coke companies controlled by the United States Steel Corporation.

Q. How long have you been president of the H. C. Frick Coke Company?

A. Since July, 1897.

Q. Prior to that time what was your occupation?

A. I was general manager of the same company.

Q. For how long?

A. Perhaps two years.

Q. And prior to that time?

A. And general superintendent.

Q. For how long?

A. I think about eight years. My entire service with the company and its predecessors was from 1875 to date.

Q. And in what position did you commence?

A. As a clerk.

Q. And what was your business experience before that time?

A. I had some little experience as a country store clerk.

Q. Nothing to do with the coke business?

A. No, sir.

Q. Your acquaintance with coke dates from 1875?

A. Yes, sir.

Q. How long has coke been manufactured in this country?

A. Well, I do not know that I could tell you the date of the first manufacture, but as a commercial proposition I think it dates from about 1860.

Q. And for what purpose was coke first manufactured in this country?

A. For melting iron, used in furnaces.

Q. What was used as a fuel before coke was used?

A. In some parts of the country they used charcoal and in others anthracite.

Q. When did the use of coke in blast furnaces become general, about when?

A. In the Pittsburgh district, I think, it was first generally used; that was some time in 1860, and it has gradually grown and spread throughout different parts of the country since; in fact, some charcoal is yet used, and until very recently some

anthracite coal was used. Within perhaps twelve years we used to furnish coke to some furnace people who used coke and anthracite together, mixed, and I think it could be fairly stated that coke is now generally used for making pig iron in blast furnaces in the United States, notwithstanding these few exceptions.

Q. It is safe to say, is it not, that for the last forty years coke as fuel has been generally used in blast furnaces in the Pittsburgh district?

A. Yes.

Q. Coke, as I understand it, Mr. Lynch, is bituminous coal from which the volatile matter has been drawn or separated?

A. Yes.

Q. Usually by combustion—always by combustion?

A. I think that is so.

Q. Leaving a residue of carbon and some other chemicals?

A. A certain hardness. I think that is a pretty fair definition of coke.

Q. Of course, all bituminous coal in this country will not make coke?

A. No.

Q. Where was coke first made in the United States; I mean commercially, of course?

A. In what is now known as the Connellsville coke region.

Q. And about what time did the commercial manufacture of it start, about 1860?

A. Yes; in a very small way, of course.

Q. Starting with a few ovens, I suppose?

A. Yes.

Q. Before we get to talking about the ovens, Mr. Lynch, tell us how many kinds of coke ovens there are?

A. There are two general types of coke ovens used in this country now: By-product and bee-hive; but there are many types of by-product ovens.

Q. There are many variations of those two general classes?

A. Yes.

Q. The by-product oven is one which utilizes the waste gases, is it not?

A. The by-product oven is a different process from the

bee-hive. There the volatile is separated by the process of distillation, while in the bee-hive oven it is done by combustion. We consume the gas and the volatile matter in the bee-hive oven. In the by-product oven the purpose is to save the gases and make use of them. To illustrate, take a coal that will produce 10,000 feet of gas per ton; in a by-product oven they will save 6,000 of that and use only the 4,000 for the making of the necessary heat; and this 6,000 then is available for any purpose—for illuminating, for heating, or for any purpose.

Q. Could that be described in this way: That in the bee-hive oven the volatile matter is actually burned and goes to waste?

A. It is actually consumed; that is, the heat constituent—and after all, heat is the essential for manufacturing coke in any kind of an oven; heat is the essential. In the bee-hive all the gas and all the volatile, bituminous matter is consumed, sending out these big volumes of smoke and heat. In the by-product oven, in addition to saving the gas, as I have tried to describe, they save the ammonia. That, I think, is perhaps the most valuable by-product. Then this ammonia is converted into a sulphate for fertilizer.

MR. DICKINSON: That is combined with a phosphate rock, is it?

THE WITNESS: No; sulphuric acid only. Then there are a number of minor by-products that some manufacturers go into. We do not go into anything of that kind. We only have the gas, the ammonia and the tar.

By MR. REED:

Q. Now, Mr. Lynch, just to finish this in a word: I assume that in your bee-hive oven you have to admit some air in order to get that combustion of the volatile matter?

A. Oh, yes. That is all the skill there is in managing a bee-hive oven—the degree or the extent to which the air is admitted; and the economy of the process is largely controlled by that. If they admit too much air they will burn up some of their coke, some of their carbon. If they have too little

they do not get the proper combustion. So that is about all the skill there is in operating a bee-hive oven.

Q. In the by-product oven I assume there is no air admitted at all to the coke, is there?

A. Oh, yes; and in some types——

Q. Do you mean there is or there is not?

A. There is. They do it in a different way, though. In some types they have what they call—I cannot give the technical term, but they help heat up the ovens; they take out so much gas that they have to add to the heat of the oven. They have a process of using what they call regenerators; I think that is what they call them; they put them under the oven. I am not a practical by-product man, you know.

Q. I understand. I just wanted you to give it in a general way for the record.

A. I know something about the general subject.

Q. We simply wanted a general description, Mr. Lynch, so as to make the rest of your testimony a little more intelligible to us who do not know anything about coke ovens.

Mr. Lynch, at the present time about what does it cost per oven to build a bee-hive oven plant of average size, together with the necessary machinery and tipple and other appliances that go with it; and what does it cost to open up and equip a mine of average size to supply that plant? About how much per oven?

A. It is pretty hard to give you anything definite on that. The cost of an oven plant would depend very much on the location, and the cost of opening and developing a mine would depend largely on the depth of the coal and all that sort of thing. The last plant that we built comprised 400 bee-hive coke ovens and two shafts about 300 feet deep each. Equipped up to the capacity and developed up to the capacity of those 400 ovens the cost was about $2,000 per oven; that is, the ovens, the opening of the mine and the developing of the mine altogether.

Q. And is a 400-oven plant a fair size?

A. It perhaps might be called a large size.

Q. And that whole thing was done at a cost of $800,000?

A. Yes; a little over $800,000.

Q. Plus the land?

A. Yes; I do not talk about land. I am just talking about the improvements and the work done.

Q. Mr. Lynch, what was this Connellsville district which you have told us about and mentioned in your testimony? In what counties is it?

A. Without wishing to burden the record, I might say that I was born and raised in that district, and I have known something about it ever since I have known anything; since I was fourteen years of age. When I first knew it, when I first became employed in the work, was in 1875. At that time what was known as the Connellsville region extended from Mount Pleasant, in Westmoreland County, to Uniontown, in Fayette County, a distance of perhaps twenty-one miles between them.

Q. And therefore it was all included, I assume, in Westmoreland and Fayette counties, Pennsylvania?

A. Yes, and the mines were just on the out-crop; the mines that we had in the district at that time were on out-crop. There were no shaft mines at that time, no deep coal had been opened at that time.

Q. Have you a map on which those points are shown?

A. I have one here somewhere.

(The map produced was marked "Defendants' Exhibit 88.")

By Mr. Reed:

Q. I show you Exhibit 88, and call your attention to that part of the map which is outlined in blue pencil.

Mr. Dickinson: Does that take in Westmoreland and Fayette counties?

Mr. Reed: A part of Westmoreland. The map itself takes in all of it.

Mr. Dickinson: I understand; I meant just that portion.

By Mr. Reed:

Q. The top of the map is north, is it not?

A. Yes.

Q. Does this old Connellsville District that you speak of

lie on the eastern or western side of that area which is outlined in blue?

A. East.

Q. You have told us that this district was about 21 miles long, as it was then known?

A. Yes.

Q. How wide was it?

A. The average was about three miles.

Q. And all of the mines were then on the outcrop?

A. Yes.

Q. Is the outcrop shown in any way on this exhibit?

A. I do not think it is especially.

MR. DICKINSON: Those were all drift mines, I think you said; no shafts?

THE WITNESS: No shafts; there were drifts and slopes, but no shafts.

By MR. REED:

Q. After 1875 was that district extended by any further explorations or testing?

A. From 1875 to early 1878 there were no new plants, but beginning in 1878 the district was extended clear up to Mammoth in Westmoreland County, and to Fairchance, on the south, and from early 1878 to 1881 the number of ovens had increased from about 3800 to 8100.

Q. After that was there any further extension of the old Connellsville district?

A. Yes. We went along then for another period of years until there came another expansion in the iron and steel business, and an increase in the demand for coke, and we went farther.

Q. To what points was it finally extended?

A. To Latrobe on the north and Smithfield on the south.

Q. About that time was the district known and understood to run from Latrobe to Smithfield?

A. Well, I think it had been known for some time by about everybody, but it was not admitted until perhaps some time in 1900. The people that were in the business were not en-

thusiastic about the expansion of the territory and increasing competition, and every new step was more or less minimized in quality and extent and that sort of thing.

Q. You did not like to admit that there was as much coal down in that country as you knew there was; is that what you mean?

A. We did not admit it so long as we were not compelled to.

Q. You have described the old Connellsville district. What other coke district was there in the near vicinity?

A. In 1899 that was the beginning of the greatest movement and expansion that we have had, the Illinois Steel Company and the American Steel & Wire Company came into Fayette County and developed what has since been called the Lower Connellsville, and in those early years, I think the first year, they called it the Klondike.

Q. Why did they call it the Klondike?

A. Well, its value and richness I suppose corresponded with those Klondike gold mines that they discovered out there in the West. That is the way they gave it the name.

Q. What year was that?

A. That was in 1899.

Q. Tell us by name the points on this map that marked the extent of that Klondike region as it was then known in 1899?

A. It is defined—the Monongahela River is the western boundary.

Q. What is the northern limit of it?

A. The northern is Millville; that is about the northern boundary.

Q. What is the southern limit?

A. It came clear on down to New Geneva.

Q. And what was the approximate width of the new district?

A. Well, I should think there was very little difference. It was a little wider, perhaps, than the Connellsville. It was about three and a half miles, on the average.

Q. In a general way, do the shaded portions on this Exhibit 88, between the Monongahela River and the eastern

limit of this Connellsville district show where the coking coal of those two districts lie?

A. In a general way, yes; I think approximately accurately or correctly.

Q. When was any coking coal known to exist in southwestern Pennsylvania outside of the old Connellsville and the Klondike districts?

A. Do you mean when the public knew; do you mean when anybody knew?

Q. I mean when experienced men in that business came to realize it. When did you first know it?

A. I think that every experienced coke man in the old district knew that practically the entire thick part of the Pittsburgh seam of coal was coking coal.

Q. How long has it been known, if it has been known at all, that there was coking coal in Greene County, Pennsylvania?

A. Oh, I suppose that has been known for twenty years. It has been a much more recent period than that when it has been absolutely demonstrated and tested and known generally.

Q. How long has it been known by men in the coke business that there was coking coal in Washington County, Pennsylvania?

A. I think that Jones & Laughlin have been drawing their principal supply of coking coal from the Pittsburgh district in Washington County for all of twenty years; perhaps more than twenty years.

Q. Then in the year 1900 was it known that Washington and Greene Counties contained coking coal?

A. Undoubtedly.

Q. What part of those two counties is now known to contain coking coal of good quality?

A. I have marked it on this map here approximately.

Q. Then the boundaries are Mason and Dixon's Line, the Monongahela River, and the blue pencil line which runs diagonally down to the southwest corner of the State?

A. Yes. I want to say about this map that we do not want to be understood as saying that the coal outside of this

line is not coking coal. We want to say that the coal embraced within the borders of those lines has been tested and demonstrated, and is known by everybody that is in the coke business to be coking coal.

Q. But you do not mean to say that any coal that may lie outside of that district is not coking coal?

A. I would say to the contrary; I would say that I think a good deal of it is.

Q. Do you know of coking coal outside of this district?

A. Yes.

Q. Upon what basis did you outline this district?

A. As I have stated, we took the territory which has been fully demonstrated and tested and recognized by about everybody in the coke business.

Q. Now, at the present time, 1913, about how many acres of unmined coking coal are there in the old Connellsville region, as you have defined it?

MR. DICKINSON: Excepted to as irrelevant.

THE WITNESS: About 44,000 acres; almost half of the original amount.

By MR. REED:

Q. About how many acres were there in that district in 1911?

A. This is very general; I can give you the exact figures, but I would say 1,500 acres more, about.

Q. That is approximately 45,500 acres?

A. Exactly.

Q. And in the year 1901 about how many acres of unmined coal were there in the old Connellsville district?

A. Approximately 60,000 acres.

Q. Now, coming down to the Klondike district, as you have described it, at the present time how many acres of unmined coking coal are there in that district, in 1913?

A. We figure about 67,000.

Q. In 1911 about how many more were there?

A. A thousand acres more, approximately.

Q. Approximately a thousand acres more?

A. Yes.

Q. In 1901 about how many acres of unmined coking coal were there in the Klondike district?

A. Prior to 1901 it was a virgin field; there was very little worked out then; I would say 80,000 acres, approximately.

Q. In Greene county, that part of Greene county that you have marked there as containing coking coal, Mr. Lynch, how many acres of coking coal are there now unmined?

A. 275,000 to 300,000 acres.

Q. How much has been mined in the last two years.

A. Very little.

Q. Would a thousand acres cover it?

A. That is very much more; nothing like a thousand acres.

Q. And since 1901 about how much has been mined?

A. Well, there has been really no mining done in Greene county until the last two or three years.

Q. Then those figures that you have given us would come within a few thousand of correct for 1901?

A. Yes, from 275,000 to 300,000 acres.

Q. Coming down to Washington county: At the present time how many acres of unmined coking coal are there in that part of Washington county which you include within the limits shown on this plan?

A. We make it approximately 175,000 acres.

Q. And about how much has been mined in that part of Washington county in the last two years?

A. I would say offhand not exceeding 200 acres in that part of it.

Q. Now, does the coking coal of that seam stop right at Mason and Dixon's line?

A. Oh, no. The same seam of coal, the Pittsburgh Seam, as it is known, extends on into West Virginia.

Q. Can you give us any estimate of the quantity of unmined coking coal of the Pittsburgh Seam that is now known to exist just south of this line in West Virginia?

A. I would say at least 200,000 acres.

Q. Mr. Lynch, in 1901 how many coke ovens were there in this whole district, in these four counties?

A. Approximately 24,000 in 1901.

Q. How many of them were in the old Connellsville district?

A. All but 2,000. 22,000 in the old Connellsville and 2,000 in the Lower, as they called it then, Klondike.

Q. Where did Jones & Laughlin coke the coal that they were then getting from Washington county?

A. Their coke ovens were at Pittsburgh; they brought the coal down, brought it down the river.

Q. They did not coke it at the mines?

A. No, sir.

Q. At the present time how many ovens are there in that part of the four counties?

A. A total of nearly 39,000; 16,700, I think, in the lower and 22,000 in the old; making a total of 38,700, nearly 39,000.

Q. By the Lower you mean the Klondike district?

A. Yes. It is now called the Lower by everybody.

Q. Are there any ovens in Greene or Washington counties?

A. Yes, there is one plant in Greene county.

Q. How many ovens?

A. I really could not answer. I don't know. And in Washington county there are—I really only know of three myself in Washington county.

Q. There are three plants in Washington county now?

A. Yes, the Pittsburgh & Westmoreland, Pittsburgh & Buffalo——

Q. (Interposing): Ellsworth?

A. Yes, Ellsworth; that is the third.

Q. The Lackawanna?

A. That is the same thing. Let me get this right. We are talking about plants. I have described operators and owners. Ellsworth has got two or three plants. Washington County, I would say, had perhaps a half a dozen plants.

Q. Half a dozen plants?

A. Yes.

Mr. Dickinson: That is in Washington county?

The Witness: Yes.

By Mr. Reed:

Q. There are half a dozen plants in Washington county at the present time, you say?

A. Yes.

Q. And those half a dozen plants are owned by three different interests?

A. Yes.

Q. In 1901, Mr. Lynch, how many acres of coking coal land had you in the old Connellsville district?

A. All of our companies together had about 45,000 acres; practically three-fourths of it.

Q. About 45,000 acres?

A. About 45,000 acres.

Q. Or about 75 per cent. of the acreage?

A. Of the coal then unmined.

Q. In the Lower, or Klondike district, how many acres had you?

A. We had coal in Greene County.

Q. I am asking you about the Lower District.

A. That is the Lower district.

Q. Is that in the Klondike district?

A. No. We had 15,000 acres in what was then called the Lower.

Q. Did that include a part of Greene county?

A. No. We had 2,000 in addition to that over in Greene county.

Q. How many acres did you have in Washington county?

A. We had not any.

Q. In 1911 how many acres in the old Connellsville district had you?

A. Well, now, all I could say is, add about 1,500 acres to our total now in both districts. We mined about 1,500 acres in 1912 in all the districts, so if we have got 72,500 acres now, which is the fact, we had 74,000 acres then; just how to divide it between the two districts I could not give you that offhand.

Q. Let us start it on this basis, then: At the present time how many acres of coking coal have you in this whole district which is shown on this map in the blue pencil outline?

A. 72,500.

Q. How many of those acres are in Greene County?

A. 5,100.

Q. How many of those acres are in Washington County?

A. Nearly 5,900; 5,800 and something.

Q. That leaves 61,600, if my recollection is correct?

A. About that.

Q. In Fayette and Westmoreland Counties?

A. Yes; we have 49,000 acres in Fayette County and about 12,600 acres in Westmoreland County.

Q. That is to say at the present time your company and its affiliated companies has about 72,500 acres out of a total of——

A. Of over 600,000 acres.

Q. Is it over 600,000 acres?

A. Yes, sir.

Q. In the four counties?

A. Yes.

Q. When you speak of the acreage owned by your company, Mr. Lynch, does that include or does it not include all that the Steel Corporation controls in that district?

A. It includes all that the Steel Corporation owns, the steel companies controlled by the Steel Corporation and also what we have under lease. We have three plants where we do not own the coal; we are working it on a lease.

Q. You are including in this estimate the acreage of that leased property?

A. Yes.

Q. In 1901, Mr. Lynch, how many competitors had you in the manufacture of coke in the southwestern part of Pennsylvania?

A. Well, I do not know that I could answer that--southwestern Pennsylvania.

Q. Well, in Pennsylvania.

A. In the Connellsville coke region I can answer it.

Q. All right, limit it to that.

A. That is the only place we were operating. Outside of the companies now controlled by the Steel Corporation there were twenty-seven individuals, firms and corporations in the coke business in the Connellsville region, old and new.

Q. At the present time how many concerns have you who

are competing with you in that district in the manufacture of coke?

MR. DICKINSON: Excepted to as irrelevant.

THE WITNESS: Eighty-six.

By MR. REED:

Q. And about how many had you in 1911?

A. The same; perhaps it would be two more this year than then. In fact, I know there was. Say eighty-four for 1911.

Q. You have already given us the number of ovens then and now? What percentage of the ovens did your company own in 1901?

A. We owned more than two-thirds of all the ovens then in the region.

Q. What percentage do you own at the present time?

A. About 51 per cent. now. Perhaps I had better make myself a little clearer.

Q. All right; any explanation.

A. We have 19,642 ovens, I think, that are active and are operated from coal adjoining them. Then we have 700 ovens that we have maintained in order to operate, at which the coal has been exhausted, and used in times of great activity and great demand for coke, shipping the coal from the nearest mine where we have the capacity, to these coke ovens; so adding those 700 makes a total of about 20,400 or 20,500, or about 52 per cent. of the entire number of ovens in the district.

Q. You have already told us there are something over 39,000 ovens?

A. Not quite 39,000.

Q. About 39,000 ovens in the district?

A. Yes.

Q. What was your percentage in 1911?

A. Practically the same as it is now. In 1911 we produced 52 per cent. of the total coke product in the Connellsville region. In 1901 we produced about 56 per cent., according to my recollection. May I refresh my recollection?

Q. Certainly. Have you a memorandum that you have prepared there?

A. In 1911 we produced 53 per cent. of all the coke produced in Connellsville and also in the Connellsville region.

MR. DICKINSON: At Connellsville and Lower Connellsville?

THE WITNESS: Yes.

By MR. REED:

Q. And in 1901 what was your percentage?

A. In 1901 we produced nearly 79 per cent.

MR. DICKINSON: Is that the same region now?

THE WITNESS: Yes.

By MR. REED:

Q. Mr. Lynch, right at that point I want to ask you what percentage of the production of the whole United States the Connellsville production constituted in 1901?

A. According to the reports of the United States Government for 1901, the Connellsville and Lower Connellsville regions together produced about 52 per cent. of the entire coke production of the United States.

Q. Then your company's percentage of the entire output of the United States was 79 per cent. of the 52, was it?

A. No; we had 79 per cent. of the Connellsville; the Connellsville had 52 per cent. of the United States, and we had 41 per cent. of the United States.

Q. You have done the arithmetic for me. Thank you. In 1913 what percentage of the country's output of coke was produced in this Connellsville and Lower Connellsville District?

A. We have not got the figures as yet for 1913.

Q. No; of course you have not.

Give me the figures for 1912, then.

A. For 1912, the Connellsville and Lower Connellsville region produced 47.4 per cent., and our companies produced 26 per cent.

Q. That is to say in 1912 your company produced 26 per cent. of the total output of coke of the United States?

A. Yes, sir; that is, our companies in this Connellsville and Lower Connellsville region.

Mr. Dickinson: That was in 1911.

Mr. Reed: In 1912.

By Mr. Reed:

Q. Based on the output of the Frick Coke Company, from this Connellsville and Lower Connellsville district in the past ten or twelve years, for how many years have you a supply of unmined coking coal?

A. In these four counties?

Q. Yes; in these four counties.

A. You mean a supply for the districts which we now supply?

Q. I mean, assume that your company will in the future produce from this district the same tonnage annually that it has averaged in the past ten or twelve years from this district, how long will your unmined coal last you?

A. Oh, nearly fifty years.

Q. What is the largest year's production that you have had since the Steel Corporation was formed, Mr. Lynch?

A. 1906; we produced something like twelve million and three hundred and some odd thousand tons.

Q. If the production in the future were to run just what it was in 1906, how long would your reserve of coal last you from that district?

A. I think that would cut it down one quarter and make it about forty years.

Q. About forty years?

A. I would say so, yes.

Q. You have not undertaken any prophecy as to the ratio of increase, have you, of the coke production of your company?

A. No, sir.

Q. What other iron and steel companies have coking coal mines in that district in these four counties?

A. The Stewart Iron Company, the Republic Iron & Steel Company, the Ohio Iron & Steel Company, through the Orient Coke Company, the Struthers Furnace Company.

Q. Have Jones & Laughlin any?

A. Yes; but they are up in Washington County.

Q. That is what I asked—in this district, in the four counties.

A. Jones & Laughlin have very large holdings; the Lackawanna Steel Company have large holdings; Andrews and Hitchcock, Pickands, Mather & Company, the Wheeling Iron & Steel Company, the La Belle Iron Works, the Youngstown Steel Company, the Brier Hill Iron & Coal Company.

Q. You gave the Youngstown Sheet and Tube, did you?

MR. DICKINSON: He did not mention that.

THE WITNESS: The Youngstown Sheet & Tube.

MR. DICKINSON: You had not mentioned that?

THE WITNESS: No. I do not remember whether there were any more or not.

By MR. REED:

Q. Does the Cambria Steel Company get its coke supply from there?

A. It does not. The Cambria Steel Company——

Q. Did they ever?

A. Oh, yes; they got their entire supply from the Connellsville region; and they worked out the coal and abandoned that region, and they are getting their supply now from the lower measures, right at their plants, over at Johnstown, in Cambria County.

Q. We will take up those districts later.

You mentioned the Lackawanna Steel Company as owning coal there, did you?

A. They have two coke plants surely, and they have about 14,000 acres of coal in that district.

(Whereupon a recess was taken until 2 o'clock p. m.)

AFTER RECESS.

THOMAS LYNCH,

the witness under examination at the taking of recess, resumed the stand.

DIRECT EXAMINATION (Continued),

By Mr. Reed:

Q. Mr. Lynch, in the course of this morning's examination you testified as to the proportion of coal in the old Connellsville and in the Klondike—Lower Connellsville district—which came under the control of the United States Steel Corporation in 1901, but I fear that the figures that you gave us as to acreage won't contrast with the figures that you gave as to the total acreage, because of the way I asked the questions. I had asked you to give the total acreage in the four different districts; that is, Old Connellsville, Lower Connellsville or Klondike, Greene County and Washington County, and then I asked you to give the acreage of the Steel Corporation by counties, so that while the figures will contrast properly in their totals, I fear they would not in the items. Now, can you tell us the total acreage of unmined coal divided in among the four counties; that is to say, you have already given us the acreage in Greene County and in Washington County. Now, can you separate Westmoreland and the Fayette acreage?

A. In 1901?

Q. 1901 and 1913 both.

A. I could not give you the acreage in Westmoreland County in 1901 at this moment.

Q. Can you give us the present acreage in Westmoreland County?

A. Yes.

Q. What is that?

A. From 60,000 to 63,000 acres, over the whole coking area in Westmoreland County. That does not mean now the Connellsville region.

Q. Let me see if I understand it. That means that part

of the coking coal region that extends into Westmoreland County?

A. Yes.

Q. But it does not include the bituminous coal of Westmoreland County that is suitable for coke?

A. Certainly.

Q. Nor does it include that part of the Connellsville region which is outside of Westmoreland County?

A. That is correct.

Q. Of this 60,000 to 63,000 acres in Westmoreland County, how many acres are now owned by the Steel Corporation and its subsidiaries?

A. About 12,600.

Q. Coming down to Fayette County; as I understood your testimony this morning there is in Fayette County a part of the old Connellsville district and part of the Lower Connellsville district, or Klondike district?

A. Yes.

Q. Taking the coking coal in the whole of Fayette County, how much is there now?

A. Between 90,000 and 95,000 acres.

Q. And of those 90,000 to 95,000 acres, how many acres are controlled or owned by the Steel Corporation?

A. 49,000.

Q. Does that include the acreage which the Corporation has under lease?

A. Yes.

Q. As well as that which is owned in fee?

A. Yes.

Q. Then in Washington County how many acres have you?

A. 5,900.

Q. And in Greene County how many have you?

A. 5,100.

Q. If my calculation is correct, that makes 72,500 or 72,600 which you own?

A. 72,500.

Q. Mr. Lynch, about your mines in that district, I want to complete what you have to say about the southwestern Pennsylvania district before we go on to any other States.

How many mines have you there altogether, approximately?

A. Seventy-one mines, I think, and sixty-four coking plants.

Q. From the standpoint of the men who have to work in these mines, Mr. Lynch, in what condition are they as to safety, comfort, lighting, and from every other standpoint?

A. I think it is conceded by mining men generally of Pennsylvania that there are no mines in the State of Pennsylvania or elsewhere in the United States that are better ventilated, better calculated to preserve the health and lives of employees, and have more safeguards, than the mines of this company.

Q. Is that your own opinion about it?

A. Yes, sir; that is my opinion also.

Q. Will you state, Mr. Lynch, some of the measures that have been taken by your company in order to reach that end? To begin with, how are your mines lighted?

Mr. Dickinson: Excepted to as irrelevant.

The Witness: All shaft mines are lighted around the bottom of the shaft and in the portions where the men are more frequent and in largest numbers, by electricity. Most of the men, a large majority, use safety lamps, even though there is no requirement under the law of the State of Pennsylvania or regulation for it by the Department of Mines. Every known safety device is in use that we have been able to find in this country or in any other country. We at intervals sent men abroad to visit the mines, to see if they can find anything new, anything that will add to the safety of the men. It is all handled in a systematic way. They have a general safety committee composed of the general officers of the company in the field. Then each plant has a safety committee composed of the principal officials of plants, and then each plant has a safety committee of workmen appointed by the superintendents. These workmen make an examination and inspection of the mines about every three months, and the committee is changed not oftener than once a year. If a committee reports something that is in their judgment not right, not safe, which ought to be corrected, that committee would be maintained un-

til the matter complained of was corrected. Every accident, fatal or serious, is carefully investigated and a bulletin is then sent out to every other mine, briefly as possible, yet fully describing that accident and how it occurred, with a view of preventing a recurrence of a similar accident in another mine.

Q. And in that way there is some interchange of information, I assume, among the different companies?

A. Yes.

Q. What measures have you taken, if any, to light the main entries, through which the men are required to pass most frequently?

MR. DICKINSON: Excepted to as irrelevant.

THE WITNESS: In the shaft mines, as I say, they are lighted by electricity, but we whitewash one side of the wall of the entry—that is the best way to describe it—and that makes it more prominent, makes it better lighted, too. In most of the mines they do that.

By MR. REED:

Q. Have these improvements in lighting, the installation of these safety devices, the work of these sanitary committees, and the interchange of information which you spoke of led to any diminution of the number of accidents in your mines?

MR. DICKINSON: The same exception.

THE WITNESS: Yes, I think the H. C. Frick Coke Company, that is our largest company, holds the record in the United States for output per fatality.

By MR. REED:

Q. How about Belgium and England, if I might interrupt; do they beat your record?

MR. DICKINSON: That is excepted to as irrelevant.

THE WITNESS: No country beats our record.

By MR. REED:

Q. Does any country equal it?

A. No country equals it for the number of tons of coal produced per fatality.

Q. Is there any more coking coal in the United States than

that just included in this district which you have marked in blue on that map?

A. Coke is made in about 25 or 26 States of the Union.

Q. Is there any more in Pennsylvania besides that you have marked on that map?

A. Very much more than in the Pittsburgh District.

Q. Where else is coking coal obtained in Pennsylvania?

A. Cambria County, Indiana County, Jefferson County, Armstrong County, Bedford County, Center County, Clearfield County; altogether some ten or twelve counties in which coke is being made.

Q. Is coke actually being made in these other counties?

A. I think in every one I have named; I think I named about nine counties.

Q. Take the Cambria Steel Company, in which county is its coke made?

A. In Cambria County.

Q. In what county is its coal obtained?

A. In Cambria County.

Q. How about the Pennsylvania Steel Company; where does it obtain its coke?

A. They got their coking coal in Cambria and Indiana Counties.

Q. How about the Bethlehem Company?

A. The Bethlehem get theirs in West Virginia, from the same measures of coal that we are now discussing in these Pennsylvania counties.

Q. There are three coal bearing measures or three seams of coal that are commonly mined in Pennsylvania, are there not?

A. There are more than that.

Q. That can be coked, do you mean?

A. There is the Pittsburgh seam, the Freeport and the Kittaning.

Q. The Pittsburgh seam is that which is mined in the Connellsville district?

A. Entirely.

Q. Up in Cambria County near Johnstown, where the

Cambria Steel Company gets its coke, what vein do they mine?

A. I think they mine both the Kittaning and the Freeport.

Q. In Indiana County what do they mine?

A. The Freeport.

Q. What vein is it that the Bethleham obtains its supply from?

A. Both the Freeport and Kittaning.

Q. Down in West Virginia?

A. Down in West Virginia.

Q. Do those veins give good coke?

A. I think there is no question about that; I never heard it questioned.

Q. How many acres of coking coal are there in the State of Pennsylvania outside of this district that you have outlined in blue?

A. Pennsylvania Geological Reports show over six million acres in these nine or ten counties that I have mentioned.

Q. That is coking coal?

A. Coking coal outside of the Pittsburgh coal. That is, the Freeport and the Kittaning I am speaking of.

Q. That takes no account of the coal which is suitable for steam purposes and not suitable for coking?

A. This coal is very good steam coal too.

Q. I know that, but it includes nothing but coking coal?

A. Nothing but coal that can be coked and is coked.

Q. Of those six million acres how much do you own?

A. Not one acre.

Q. You have already told us about the extension of this Pittsburgh seam from the Connellsville district over into West Virginia. How much do you own in West Virginia of that coking coal?

A. Pittsburgh seam? Not one acre.

Q. I am not talking about the Pocahontas district, where it comes into West Viriginia, but in northern West Virginia fields, do you own any coal?

A. We do not.

Q. Where is the Pocahontas district?

A. In the southwestern part of West Virginia; in fact, it extends over into Virginia.

Q. How many seams of coal are there in that district that are available for coking purposes?

A. In our district there are three.

Q. In the Pocahontas district?

A. In the territory of the Pocahontas, or Flat Top region, as I think it is more generally known, in our territory there are three workable veins.

Q. Of what thickness?

A. No. 3 runs from four to eleven feet thick; No. 4 averages about six feet thick, and No. 5 runs from five to six feet thick.

Q. And how many acres of land are underlaid with coking coal in the Pocahontas district?

A. I cannot answer that question, Mr. Reed.

Q. How many acres of coking coal are there, I will put it that way?

A. My answer to that would be very general.

Q. How many counties does it cover?

A. Four, I think; it will run considerably over a half a million acres; it may run to a million acres. I am not so familiar with the extent of the field. My information is limited largely to the territory which we are in.

Q. In that part of the Pocahontas district in which you are, how many acres are there?

A. Our lessor, the Pocahontas Coal & Coke Company, has 300,000 acres, and there are two or three other very large owners in the field. Berwind-White have a large interest; the Croziers of Philadelphia have large holdings, and the Bouviers, New York people, have a large tract just adjoining us. I would say in the territory in which we are located there would be, in round figures, 400,000 acres.

Q. Who is this lessor of yours, the Pocahontas Coal & Coke Company; does the Steel Corporation control that company?

A. No, the Corporation is in no way interested in it.

Q. Is it not in any way interested in it?

A. No, sir.

Q. How many acres do you lease from that company?

A. We have 50,000 acres of coal bearing land, and I think we had the 1st of January last about 63,000 acres of coal of three seams. There is an area of 50,000 acres; a part of it would have two seams on and a part would have three seams on. It is the total area of coal, 63,000 acres, in round figures.

Q. When you say the Pocahontas Coal & Coke Company, your lessor, has 300,000 acres and that there are about 400,000 acres in the district, are those figures on the basis of 50,000 acres, or on the basis of your 63,000 acres.

A. I gave acres of land for these people, the Pocahontas, Berwind-White, and so on. They have the two and three veins also.

Q. Then you have 50,000 acres of coal-bearing land out of 300,000 acres of coal-bearing land owned by this Pocahontas Coal & Coke Company, and out of about 400,000 acres of coal-bearing land owned by all interests in that particular part of the Pocahontas district?

A. Yes.

Q. Can you tell us what interests control this Pocahontas Coal & Coke Company?

A. The Norfolk & Western Railroad.

Q. The Steel Corporation, you say, has no interest in it?

A. None that I know of; I think I can say absolutely it has not.

Q. You think you would know it if it had?

A. Yes.

Q. Then outside of that district that contains these 400,000 acres is there any coking coal in the Pocahontas district?

A. Oh, yes; the Flat Top region extends clear down into Virginia, down to Big Stone Gap. There are large areas of coal there. I would not undertake to give the acreage or square miles.

Q. Does your company own as much as ten per cent. of the coking coal of the Pocahontas district?

A. It does not.

Q. Are there deposits of coking coal also in Tennessee and Kentucky and those States?

A. Oh, yes; there is a very superior quality of coal in Kentucky, very large areas.

Q. Does your company control or own any coal there?

A. No. In fact, we are buying coal from there now; the Illinois Steel Company.

Q. The Illinois Steel Company is buying from there?

A. Yes, sir.

Q. How about Tennessee?

A. Tennessee has two splendid coal seams, the Jellico, and, I think, the Sewanee; I think that is what they call it.

Q. And the Mary Lee?

A. That is in Alabama. They have got a couple of million acres in Tennessee. They have coke ovens in Tennessee. They make coke there.

Q. Does the Steel Corporation, as far as you know, control any of that?

A. Absolutely not.

MR. DICKINSON: What concern was it you said made coke in Tennessee?

THE WITNESS: I did not name any concern.

MR. DICKINSON: I thought you did.

THE WITNESS: No, sir.

By MR. REED:

Q. Is there coal which is used for making coke in Illinois, too?

A. Yes.

Q. Is there any further west?

A. Oh, yes, there is coal in Colorado, there is coal in Utah.

Q. And in Wyoming?

A. And in Wyoming.

Q. Does your company own any in Colorado, Utah or Wyoming?

A. No, sir.

Q. I neglected to ask you, Mr. Lynch, how many acres of coking coal are assessed in Washington County?

A. 441,000 acres of coal are assessed in Washington County, Pennsylvania.

Q. And in Greene County?

A. A little less than 350,000. I forget the exact figure, but it is a little less than 350,000.

Q. I do not suppose that in making those assessments any difference is made between coking coal and any other kind of coal?

A. Oh, no. All the coal is assessed regardless of its quality or uses.

Q. And in giving your estimate so much less than those assessments, as you have done, you have excluded, I suppose, the coal which in your judgment is not safely coking coal?

A. I have done more than that. I have excluded coal which has not been actually demonstrated to include and be used for coking coal.

Q. Would there be any difficulty, Mr. Lynch, if a new steel company of large size, say like the Bethlehem Steel Company or the Pennsylvania or the Cambria, or Jones & Laughlin, were to be established near Pittsburgh, or near the Connellsville region—would there be any difficulty in your judgment in procuring for that company a supply of coking coal sufficient to last them as long in the future as your company's reserves of coking coal will last the Steel Corporation?

A. I do not think there would be the slightest doubt about that. It would have to be a gigantic affair that could not get acres enough to last them as long as ours would last us—forty years. More than half of the coal in Washington and Greene counties is available to anybody that wants to buy it to-day. It is owned by people who bought it to sell. There is a lot of it that is owned by the farmers, by the original owners, that are willing to sell. In Fayette county the Thaws have coal they are willing to lease.

Q. That is in the old Connellsville District?

A. In the old Connellsville District. The Thaws have coal in the Connellsville District. There is still coal in the Lower Connellsville, in the hands of the original owners, or people who bought it to sell.

Q. In your judgment, then, there would be no difficulty in establishing for that company an ample coking coal supply?

A. Not the least.

Q. I do not believe I remembered to ask you how long it would take to build a coke plant of, say, 400 ovens?

A. A coke plant of 400 ovens ought to be built in a year.

Q. How long would it take to open up virgin property so as to have that plant making coke?

A. It would take about a year to develop the mine, at least.

Q. Could you be producing coke within two years after you had gone onto the property?

A. Oh, yes.

Q. How long does it take to build a steel works?

A. I do not know.

Q. It takes more than two years, does it not?

MR. DICKINSON: He has not been shown to have ever built any, or that he knows anything about it.

MR. REED: I think your objection is good, Judge. I will withdraw the question:

By MR. REED:

Q. Do you know the annual production of coke by the Jones & Laughlin Steel Company?

A. I know their capacity. They have got ten blast furnaces with a rated capacity of 1,675 tons. Making an ample allowance, they would take 2,000,000 tons of coke a year.

Q. Do you know their holdings of coking coal in this Washington, Greene and Fayette District?

A. They are all in Washington County;—yes, they have some in Greene County. Our property adjoins theirs. They have about 20,000 acres.

Q. Assuming for them an annual consumption of coke of 2,000,000 tons, with your knowledge of the extent of their unmined coking coal, how long would their reserves last them?

MR. DICKINSON: I object, because he has not been shown to know the extent of the unmined coking coal; he has only spoken of acreage, and has not shown that those acreages run uniformly as to seams, whether every acre is like every other acre.

MR. REED: I will withdraw that question, and will ask this one:

By Mr. Reed:

Q. Do you know the nature of the coal measures in the Jones & Laughlin property?

A. Yes.

Q. How close to their property have you properties?

A. We adjoin.

Q. You adjoin?

A. Yes. In fact, we own property that two years ago belonged to Jones & Laughlin. We made an exchange, to straighten lines.

Q. Then you know the width of their seam, or the height or thickness of their seam, I should say?

A. Yes.

Q. And do you know that acreage?

A. Yes, sir.

Q. And from that can you compute the amount of unmined coal they have?

A. They have over——

Mr. Dickinson: He is not answering the question. He was asked if he could compute it.

The Witness: I think so.

By Mr. Reed:

Q. You can?

A. In a general way.

Q. How many tons of coal will they run to the acre?

Mr. Dickinson: This is excepted to because the witness has not shown that he is sufficiently qualified to testify to the amount of coal owned by Jones & Laughlin.

Q. Will you answer the question, please?

A. About 9,000 tons an acre, I think.

Q. And how many tons of coke will those 9,000 tons produce?

A. About 6,000 tons per acre.

Q. And they have how many acres in Washington and Greene Counties?

A. Something over 20,000.

Q. Then, if my calculation is correct, that would be 120,000,000 tons of coke that can be made from their acreage?

A. Assuming that calculation is right; I only carry it in my head.

Q. It is 20,000 times 6,000?

A. Yes.

Q. And at 2,000,000 tons per year, even a lawyer can figure that out, that it would last them sixty years; isn't that correct?

A. Yes.

Q. What other steel companies own large tracts of coking coal?

A. The Lackawanna owns a very large tract in Washington County. They have about 14,000 acres.

Q. And what is their annual consumption of coke?

A. About one and a half million tons is their rated capacity of coke.

Q. How many years would that last them?

A. Their coal would yield about the same number of tons of coke per acre as the Jones & Laughlin, but they do not draw all of their supply from there. They have coke ovens and mines in Indiana County.

Q. Assuming that all the coke they got came from Washington County?

A. That would be 84,000,000 tons; 6,000 times 14,000.

Q. I think that is right.

A. They require a million and a half tons a year, at their present capacity, so that is in the neighborhood of sixty years. Fifty-six years I believe that figures out.

Q. That is, excluding from consideration their acreage in Indiana County?

A. Yes.

Q. How many acres have they there?

A. I don't know.

Q. Is it a large quantity?

A. I so understand; yes.

CROSS EXAMINATION

By Mr. Colton:

Q. Mr. Lynch, you became president of the Frick Coke Company in 1897?

A. Yes, sir.

Q. Prior to 1897, will you name the companies which had been in existence in the manufacture of coke that were taken over by the H. C. Frick Coke Company?

A. Prior to 1897?

Q. Yes.

A. I think the McClure Coke Company; J. M. Schoonmaker Coke Company, J. W. Moore; Connellsville Coke & Iron Company; Dunbar, Fairchance Furnace Company; Bliss, Marshal & Company; A. A. Hutchinson & Brother. That is all I can recall now. I do not know whether that is all or not.

Q. There were a number of different companies taken over by the Frick Coke Company prior to that?

A. Yes.

Q. And those companies were supplying coke to the Pittsburgh District generally?

A. I do not know whether they were limited to the Pittsburgh District; they were supplying coke generally to the trade.

Q. Supplying coke generally to the trade, which would include Ohio and Pennsylvania?

A. Yes, sir.

Q. What was the character of the competition in coke among those several companies during 1894 and 1895?

A. Severe.

Q. And the price of coke ranged around about a dollar or $1.23 a ton?

A. I would not be surprised, I cannot recall. I know the price was very low at that time.

Q. And after those coke companies were taken over the price was about doubled?

A. No, I cannot say that.

Q. It was increased very much?

A. I would say that.

Q. Do you remember?

A. I do remember; I think coke sold in 1897 at about $1.25 a ton. I think I sold some at that.

Q. Don't you think $1.65, wouldn't that be closer?

A. No, sir; I sold coke in 1897 at $1.25 a ton.

Q. What company did you sell that to?
A. H. C. Frick Company sold it.
Q. To the Illinois Steel Company?
A. Not to the Illinois Steel Company.
Q. To what company?
A. To different people.
Q. Was that the market price then?
A. Yes.
Q. For how long in that year?
A. I think that the turn came in June or July, of 1897.
Q. And the price went up?
A. I think it did; yes, sir.
Q. Was not the average price then very much higher than it was during 1894 and 1895?
A. I should say it was. There have been very great variations in prices. Way back in——

Mr. Colton: I object to that as not called for.

Mr. Reed: I think the witness is entitled to explain his answer if he wishes.

Mr. Dickinson: If it is an explanation it is all right, but it is not an explanation of 1894 to be speaking of prices in other years. If he does that it will simply make the examination very long and interminable. If he is not going to confine himself to the questions.

Mr. Reed: I think he is entitled to finish the answer. What were you going to say?

The Witness: Way back as early as 1880 coke sold at over $5 a ton. Went from 85 cents to $5 a ton in a period of a year or a year and a half.

By Mr. Colton:
Q. Do you know what the average price of coke was in the year 1880?
A. No, I do not.
Q. Do you know what the average price of coke was in 1881?
A. I do not. Very low; in 1881 it went down very low.
Q. Do you know what it was in 1882?
A. No, I do not.

Q. In 1883?

A. I do not remember.

Q. 1884?

A. 1884, I am sure it was very low.

Q. 1885?

A. I cannot give you the price for that year.

Q. 1886?

A. No.

Q. 1887?

A. Yes. In 1887 the price got up to about $2.15 a ton. I do not know what the average was. It got to be up to $2.15 in 1887.

Q. How long did it stay there?

A. For a six months' period.

Q. What was it in 1888?

A. I do not recall.

Q. It was very low in comparison, was it?

A. I think so. I remember 1887 because I made a sliding scale with labor that year on the basis of the price of coke. That is how I remember that $2.15 a ton.

Q. 1889?

A. In 1889 it was low, we sold coke in 1889 at $1.10 a ton.

Q. What was about the average price?

A. I will say it would be perhaps about $1.50 in 1889, something like that, but that is a mere guess. I do not pretend to remember these figures, but I remember the $1.10.

Q. Was it higher or lower than it was in the preceding year?

A. I could not answer.

Q. What was it in 1890?

A. I think 1890 was a pretty good year.

Q. What was it in 1891?

A. In 1891 I do not think it was so good. I would not like to answer that from memory.

Q. In 1892?

A. That was a bad year, and 1893 was worse.

Q. 1893 was worse and 1894 still worse, on an average?

A. I would not be surprised but what it was.

Q. In 1895?

A. Then there was some improvement, in 1895.

Q. In 1895 there was an improvement when you took over the McClure Coke Company, one of your large competitors.

A. We did not take them over until October. Of course the improvement started earlier than that.

Q. You think the improvement started when they got ready to make the contract?

A. I do not know; I am merely giving you my remembrance about the price. I remember 1895 was a good year, and statistics show that the output was pretty good, and we bought the McClure Coke Company in 1895, and we were running very well then. I think the price was pretty good then.

Q. How was the price of coke in 1897?

A. Low, up until——

Q. But it was higher than it was in 1895?

Mr. Reed: Aren't you going to let him finish his answers?

Mr. Colton: Yes.

The Witness: (Continuing) I remember 1897. That was the year I became president, and the first six months in 1897 they had low prices, and the improvement came and we did a great deal better in the last six months of 1897, and I am sure we got a substantial increase in price.

By Mr. Colton:

Q. In 1898 how was the price?

A. I really cannot recall.

Q. After the company acquired these various companies which you have named, was the price of coke ever as low again as it was during the years 1894 or 1895?

A. My opinion is it was not, but I would not state positively. My best judgment is that it was never as low as it was in 1894, since. It was lower before that, but not since 1894.

Q. Can you name any year before 1894 in which it was as low as it was in 1894?

A. Yes; in 1877 and 1878 and 1884, I think.

Q. The year the Corporation was formed it was higher than it was during the year 1897, was it not?

A. In 1901?

Q. Yes.

A. I think it was much higher. I think we paid a good deal more for coke in 1901 than we did in 1897.

Q. And in 1902 it went up still higher?

A. Yes, and in 1903 still higher again. In 1903 I think we had the anthracite strike and we had no railroad cars. Coke I think went up as high as $12 a ton, in 1903, in small lots.

Q. How long did that last, that period of high prices?

A. It lasted from the first of the year until the drop came in the panic of 1903.

Q. And the panic of 1903 began about May 1st?

A. No, I think it was later than that. My recollection is that it was in June. That is my recollection.

Q. Did the H. C. Frick Coke Company acquire any additional companies between the time you became president and the time the United States Steel Corporation was formed?

A. Yes, the Calumet Coke Company.

Q. About how many ovens did they have?

A. 260.

Q. I forgot to ask you the size of the McClure Coke Company; do you recall that?

A. Yes, a large company.

Q. About how many ovens?

A. I think they had over a thousand ovens. They had in the neighborhood of 4,000 acres of coal and I think they had a thousand ovens.

Q. What were the principal coke companies that came into the United States Steel Corporation along with the Frick Coke Company?

A. The American Coke Company of the American Steel & Wire Company, the Southwest Connellsville Coke Company and the Eureka Fuel Company of the Illinois Steel Company; the Continental and the Standard Connellsville Coke Companies of the National Steel Company. I think that is all.

Q. Where were those coke companies supplying coke, to what region?

A. They were supplying it to the Pittsburgh and Valley Districts, just the same as we have been doing since.

Q. The Frick Coke Company was using, in its connection

with the Carnegie Company a great deal of its own coke; it was considered a part of the Carnegie Steel Company?

A. The Carnegie Steel Company was our principal customer.

Q. But you sold considerable coke to outsiders, didn't you?

A. Yes; we sold to the National Steel, the American Steel & Wire, and the Illinois Steel, and a number of furnaces down through the Valley.

Q. The Mahoning Valley?

A. Mahoning Valley and Cleveland, and out to Chicago. We sold to Chicago other than the Illinois Steel. We were in the general coke business.

Q. You sold to those that went into the Corporation and to those that did not go into the Corporation?

A. We did.

Q. In 1899 you spoke of the fact that some companies began to develop Fayette County, or the Klondike region?

A. The Illinois Steel and the American Steel & Wire.

Q. Did any other companies take part in the development of the Klondike region at that time?

A. There were two other companies there then, one the Bessemer Coke Company. The Bessemer had been in the lower region for a long time and had just started there, and the other called the Fayette Coke Company. They were the only two that started.

Q. When did the Union Sharon begin operations in that region?

A. That was in 1902 or 1903.

Q. They did not begin until later?

A. No.

Q. How many ovens were there developed in the Klondike and lower Connellsville region prior to the formation of the United States Steel Corporation?

A. In both?

Q. Well, take the Klondike first.

A. There were 2,500 ovens built and in course of construction. In 1901 there were about 2,000 ovens built and in operation, all owned by the Illinois Steel Company and the Amer-

ican Steel & Wire Company, except 100 of the Bessemer Coke Company, and about 100 of the Fayette Coke Company.

Q. So the Corporation took over from that region all except 200 that were then developed?

A. Yes.

Q. Now, that was the Klondike region?

A. That was the Klondike region.

Q. The Lower Connellsville region, what companies had developed coke ovens there?

A. Besides the ones we had?

Q. The lower Connellsville region and the Klondike region are the same?

A. Yes, sir.

Q. In the Old Connellsville district what companies had coke ovens?

A. W. J. Rainey, Bessemer Coke Company, Hecla Coke Company, Cambria Steel Company, Stewart Iron Company, J. R. Stauffer; that is all I can remember of them, but there were twenty-five.

Q. There were twenty-five altogether?

A. No, sir; twenty-five in the old Connellsville region. Outside of the Frick Coke Company and the Corporation companies, there were twenty-five.

Q. Those twenty-five had how many ovens?

A. They had about one-third of the ovens. We had a little over two-thirds.

Q. You had a little over two-thirds of all the ovens in the old Connellsville region?

A. Yes, sir; that is right.

Q. How many ovens at that time in April, 1901, were there in Washington County?

A. I do not know that there were any there at that time.

Q. How many were there in Greene County?

A. None.

Q. How many were there in Washington County in 1902?

A. I don't believe there were any there in 1902.

Q. In 1903?

A. I don't know when they did build those ovens. I rather think it was 1904 or 1905.

Q. It was 1904 or 1905 before they got any ovens in the region?

A. That would be my best judgment now.

Q. When was it that they first built ovens in Greene County?

A. They did not build ovens in Greene County until this year.

Q. When was Washington County first thoroughly tested and developed?

A. Oh, I think twenty years ago.

Q. How was it tested and how was it developed?

A. By the Jones & Laughlin Company going in there.

Q. What development had they made there?

A. They had, I think, three mines, and other people made many tests, diamond drill holes.

Q. What was the cost per acre of so-called coke land in Greene County in 1901?

A. Oh, I suppose you could have got any—I will tell you what we paid for ours: $70.

Q. $70 an acre?

A. In 1899, yes.

Q. And the Connellsville region at that time was about seven or eight or nine times that much?

A. Let me see. In 1901?

Q. No, in 1899. You mentioned the year 1899, and I used the same year on that account.

A. Yes; I would say it would be seven or eight times as much.

Q. It was about seven or eight times as valuable?

A. I would say so.

Q. How about the cost per acre? Was it Greene County I just asked for?

A. Yes.

Q. How about Washington County, as regards the cost per acre?

A. I think it was even lower than Greene County at that time.

Q. The Connellsville coke and the lower Connellsville coke fields were, by all odds, the most valuable coke fields in Pennsylvania, so far as you know, were they not?

A. I do not think there is any doubt about that.

MR. REED: By "valuable" do you mean from a manufacturing standpoint or from a cash market value standpoint?

MR. COLTON: I mean from every point of view.

MR. REED: From what?

MR. COLTON: I mean from the commercial point of view.

MR. REED: I do not know exactly what that means.

THE WITNESS: I am answering from the point of view of price per acre.

MR. REED: Ruling prices per acre?

MR. COLTON: That is commercial, in my view.

THE WITNESS: Not necessarily so.

By MR. COLTON:

Q. In 1902 can you give me the total number of coke ovens in Washington, Greene, Westmoreland and Fayette Counties?

A. I cannot.

Q. Can you give it for 1903?

A. I cannot.

Q. Can you give it for 1904?

A. I cannot.

Q. If there was any development in those counties by other parties than the United States Steel Corporation during 1902 and 1903, state by what parties there was such development, and what that development was.

A. In 1902 and 1903?

Q. Yes.

A. I do not know that I can give you the names or the extent of the development for any particular year, but I can name a great many who started in the coke business, built coke ovens, and are operating to-day, since 1901. I cannot, however, give the exact date they started.

Q. No, I want it by dates. You spoke this morning of certain statistics with regard to coke production in the United States for the years 1901 and 1912.

A. Yes.

Q. From what sources did you get that information?

A. We got the production for the United States from the reports of the United States, the Department of the Interior —Mr. Parker, I believe, is at the head of it.

Q. What is the name of the publication that you got it from?

A. Coke Report, I think they call it.

Q. Will you produce the publication that you got it from for 1901?

A. I think we can. I have not got it with me now.

MR. REED: Your own client publishes this. Why don't you get it from them.

MR. COLTON: I am not putting it in evidence.

By MR. COLTON:

Q. Do you know whether you got that for 1900 from that same publication that you had for 1911?

A. I do not know whether I got it from the same publication. I do know that I got it from the United States Government at Washington, Department of the Interior, and I think from Mr. Parker.

Q. When did you get it?

A. I got it two years ago.

Q. Do you know whether that showed the total coke production in the United States without regard to whether it was used for steel making purposes?

A. Yes, sir; that is what the report said; all the coke made in the United States.

Q. And you do not know what portion of coke made in the United States is used for the production of steel and what portion is used for the other purposes, copper and other purposes?

A. No, I could not give you the exact figures.

MR. REED: You will get that by dividing the pig iron and other things in the foundry.

THE WITNESS: It could be approximated very closely.

By MR. COLTON:

Q. And of the total coke produced in the United States do

you know what portion of the coke is used in the Pittsburgh District?

A. I do not.

Q. Then you do not know what proportion of the entire coke used in the Pittsburgh District was controlled by the United States Steel Corporation in 1901?

MR. REED: Do you mean the output of coke or the reserve of coking coal?

By MR. COLTON:

Q. What proportion of the output of coke produced for use in the Pittsburgh District was produced by the United States Steel Corporation?

A. I could not answer that. I do not think there was any coke produced for use in any special district. Coke is produced to use at any place that you can find a market for it.

Q. Of that that was used in the Pittsburgh District do you know what proportion it used there?

A. No, sir.

Q. Do you know anything about how much of the coke that is produced there from the Connellsville region, both lower and old Connellsville region, is sent outside of the State of Pennsylvania?

A. No, I could not give the percentage; quite a large percentage goes outside of the State of Pennsylvania.

Q. Do you know whether it is a large proportion that goes beyond the limits of Ohio and Pennsylvania?

A. Not now, not a large proportion goes beyond the limits of Ohio.

Q. But in 1901 coking coal for the Chicago District came very largely from Pennsylvania, did it not?

A. It did; yes, sir.

Q. They got very little at that time from West Virginia?

A. I could not say very little; the Illinois Steel Company got quite a tonnage there during one period, I believe it was in 1898.

Q. During the fight between the Carnegie Company——

A. (Interposing) I do not know what period it was, the

Illinois Steel Company closed its ovens entirely, closed its ovens down in the Connellsville District and got its entire coke requirements elsewhere, got it from West Virginia mainly, I understood, for a period of six months when they had closed down entirely.

Q. But aside from that period you do not know just to what extent they got their coking coal from Pennsylvania?

A. No, but I know that for several years back, as early as 1892 the Illinois Steel Company drew a substantial percentage of its coke from West Virginia.

Q. Did not the H. C. Frick Coke Company have a very large contract to supply the Illinois Company?

A. We had a contract; we had different contracts with the Illinois Steel Company.

Q. You sold the Illinois Steel Company and the Carnegie Company coke below the market price, did you not?

A. We did not.

Q. Didn't you sell the Carnegie Company coke below the market price?

A. I would say on the whole that the Carnegie Company paid us fully as much as the average price received.

Q. It was under a special contract?

A. That was one of the matters that led up to the unpleasantness, I think. We would not make a special contract with the Carnegie Company.

Q. Then before the H. C. Frick Coke Company was absorbed by the Carnegie Company there was some friction between the H. C. Frick Coke Company and the Carnegie Company?

A. I do not understand what you mean by absorbing the H. C. Frick Coke Company.

Q. I mean before it was taken over by the Carnegie Steel Company of New Jersey?

A. The Carnegie Steel Company controlled the H. C. Frick Coke Company from the day it was organized in 1882.

Q. Wasn't it a separate company down to the time its stock was taken over by the Carnegie Company of New Jersey?

A. Certainly it was a separate company and is to-day, but the stock of the H. C. Frick Coke Company was controlled by the Carnegie interests from the day it was incorporated in 1882 down to the present day.

Q. Wasn't it controlled partly by Mr. Carnegie and partly by Mr. Frick and partly by the Carnegie Steel Company?

A. It was not. I have stated it was controlled by the Carnegie interests; they had a majority of the stock from the time the company was organized, and still have.

Q. Why was there any friction; if the Carnegie Company controlled the H. C. Frick Coke Company, why couldn't it make them sell coke at the prices they wanted it to sell it at?

A. Would that give them a right to make a contract, because they were stockholders?

Q. What?

A. That would not give them a right to make a contract.

Q. What was the reason it did not?

A. Because we would not do it.

Q. You mean the H. C. Frick Coke Company would not?

A. The H. C. Frick Coke Company would not do it.

Q. Now, you spoke of there being six million acres of coking coal land in Pennsylvania. Do you know the average price per acre of that land?

A. I have not any idea of the average price.

Q. Say in 1901, what would be the average price of that so-called coking coal land?

A. I have not any idea what the average price would be at that time. We never bought or sold an acre of it.

Q. You have not explored all this six million acres?

A. We have not explored any of them.

Q. Where does your information in regard to this six million acres come from?

A. We got the acres from the reports of the State of Pennsylvania; we got the tonnages from the same source; we have been at a number of the plants where they make the coke.

Q. Have you been there?

A. Yes, I have been at the Cambria Steel Works; I have been at the plants of the Bell, Lewis & Yates, up in Punxsu-

tawney in Jefferson County. I have been at a number of the plants.

Q. What process is used in exploring this coal land?

A. Which coal land do you refer to?

Q. This six million acres that you speak of?

A. In exploring them?

Q. Of the so-called coking land, what process is used in exploring that land?

A. The same as any other coal land.

Q. What is it?

A. It is opened and samples taken out, and coked.

Q. How is it opened?

A. Dig it out; if it is deep, put in a shaft; and then from the outcrop.

Q. This is outcrop?

A. Outcrop.

Q. Do you guess at the number of acres from the outcrop?

A. No; I took the number of acres, as I say, in the State of Pennsylvania. I have not made up any estimate of acres. I took the number of acres from the official report of the State of Pennsylvania. I have not made any estimate, have not made any test.

Q. Where did you get the number of tons from?

A. I did not give any number of tons.

Q. Don't you know anything about how many tons are in there?

A. I know how many tons are produced; I can get that from the State of Pennsylvania.

Q. You can get that from the State of Pennsylvania, and you cannot tell me about the number of tons there are in there?

A. I haven't any idea; I haven't gone into that.

Q. Do you mean to say that the veins are absolutely uniform throughout these six million acres?

A. I think they are not.

Q. So that you cannot tell from the fact there are six million acres, you cannot tell as to how many tons there are?

A. I think it could be told approximately, but I have not attempted to do that at any time, but I think it could be done.

I think the report of the State of Pennsylvania of the number of acres is correct; I believe it.

Q. I am not questioning the number of acres.

A. I think the thickness of the seam can be ascertained and is known; I think the yield per acre can be ascertained and is known. I have not undertaken to do any testing.

Q. You have not undertaken to do that, yet you are testifying to it?

A. Certainly not.

Q. Did you testify that the entire acreage is uniform in the production of coal?

A. I certainly did not.

Q. Are there not a great many acres in which the coal is very much thinner than it is in other acres?

A. I think so; I think that is the case everywhere.

Q. And there are seams that peter out altogether?

A. Yes, I think so.

Q. And there are hills and valleys in there among this so-called coal land where there is no coal at all?

A. That is cut out. It is only the acres of coal that the State gives. I have not undertaken to say that I made an estimate of acres. I merely have stated that according to the reports of the State of Pennsylvania there are over six million acres of these lower measures of coal in the State of Pennsylvania, which are coking coal and from which coke is being made to-day in some seven or eight counties. The Cambria Steel Company depends almost entirely on it for its supply, and the Maryland and Pennsylvania Steel Companies also depend on these seams almost entirely for their supply of coke. They have no coal lands anywhere else.

Q. Can you state the number of these six million acres that have actually been explored?

A. I cannot.

Q. In Greene, Washington, Westmoreland and Fayette Counties, can you state the number of ovens in existence before October 26, 1911?

A. I cannot at this moment.

Q. In Washington, Greene, Westmoreland and Fayette Counties are the coking coal veins absolutely uniform?

A. I think it is conceded that this is the most uniform vein of coal known; it is not absolutely uniform. It goes from nine feet down to six feet in this territory that I have shown on the map; six feet is the minimum and nine feet is the maximum.

Q. Which region are you speaking of now?

A. In the territory that you have asked me about; in Greene, Westmoreland, Washington and Fayette Counties.

Q. In how much of that territory have you actually carried on developments on your own account, under your own supervision?

A. We have plants throughout the whole of Fayette County. We have plants in fully two-thirds of the district, covering two-thirds of the district in Westmoreland County. We haven't any plant in Washington County, and we haven't any plant in Greene County.

MR. REED: That is not what you were asked.

By MR. COLTON;

Q. In working these veins, did any of them run out?

A. Never.

Q. Did they get too thin to work?

A. Not in the Pittsburgh district.

Q. Some are thicker than others?

A. Yes, I have told you that it went from nine feet, which is maximum, to six feet.

Q. The same vein?

A. Yes.

Q. Is there any uniformity about how they run?

A. There is.

Q. What is it?

A. It is in a uniform direction. It is very well known how that coal runs in thickness. It rises from the west towards the east.

MR. DICKINSON: How does it run in thickness?

THE WITNESS: It is thicker as it goes to the east.

By MR. COLTON:

Q. It grows thicker in which direction?

A. To the east.

Q. And grows thinner to the west?

A. To the west, and there is a dividing line, what they call the thin vein and the thick vein; and all of this coking coal is in the thick vein territory.

Q. Where is the dividing line?

A. I can describe it to you, I think. No; I do not believe I could describe it to you so that you could understand it. I could show it to you on a map if I had one. I have no map. I could not describe that dividing line so that you would understand it.

Q. Taking the dividing line, what proportion of the coal field is on one side of that dividing line and what proportion is on the other side?

A. There is a very large percentage, the larger percentage is in the thick.

Q. Can you give the relative acreage of the thick and the thin?

A. I cannot.

Q. In giving the acreage in that region of those four counties, you gave all the acres, both including the thick and the thin?

A. I gave all the coking coal. In that estimate I gave the acreage of coking coal which I said in Greene County was from 275,000 to 300,000 acres; I also said that there was a total assessed in Greene County of 350,000 acres of coal, and in Washington County I gave my estimate of coking coal from about 175,000 to 200,000 acres; and there is 441,000 acres assessed altogether in Washington County. So in Washington County more than half would be in the thin vein, and in Greene County very much less than half would be in the thin vein.

Q. What you speak of as the thick vein; is that uniform or does that vary?

A. No; I say that the thick vein varies from six to nine feet.

Q. What does the thin vein do?

A. It gets down to two feet and a half or three feet.

Q. Take the thick vein: Is it richer in some parts of the county than it is in other parts of the county?

A. Oh, its quality varies somewhat under the same farm, so far as that is concerned. It is the most uniform seam of coal, both in thickness and quality, known in this country or any other country; yet it varies in some particulars. The general characteristics are the same. I could illustrate it, perhaps, like the land that overlays it. The general characteristics of the land are the same, but the farms are different; every field is not exactly like every other field; there are some little variations in the land in the different fields and the different counties.

Q. Is there not a difference in price in those different areas?

A. Yes; there is a great difference in price. Location and time have a great deal to do with the matter of price.

MR. DICKINSON: Location and what?

THE WITNESS: And time. The period in which the purchase is made.

By MR. COLTON:

Q. Is there not a difference in price at the same time between different acres in that same region?

A. Yes. The location has more to do with it, though, than the quality, and the time you buy it.

We bought, at Mount Pleasant in the Old Connellsville region, coal at $400 an acre, right adjoining the biggest coke plant in the world, with 900 ovens, which three years before the man from whom we had bought it paid $200 an acre for. Here we are talking about this Greene County coal and we are talking about the Klondike coal. The coal that the Illinois Steel Company bought in 1899 they paid $350 an acre for. They sold Connellsville coal in the old basin for $1,000 an acre, and took that money and bought in the Lower or Klondike. The American Steel & Wire, in the same period, bought adjoining property at $170 an acre; and before the man whom the American Steel & Wire Company bought that property from was able to convey it—to show you how prices change—he had to pay $500 for some which he sold to the American Steel & Wire Company at $170. That shows you how prices change, and how quickly, and what little the quality has to do with it.

Q. Take the same region, the same general neighborhood and the same time, and there is a difference in price in acres?

A. Certainly there is; always——

Q. And this difference in price is based, in part, upon the thickness of the vein?

A. Oh, yes.

Q. And based upon the quality?

A. Yes, certainly, to a certain extent.

Q. How many coke ovens does it take to produce coke enough to operate the Carnegie Steel Company?

A. I have a memorandum here of how much coke we give the Carnegie Steel Company a year. If you will bear with me, I can hunt that up and give it to you. I have not got it at my tongue's end here, but I have made a memorandum of it which I have here, as to how much coke we gave the Carnegie Steel Company at some period.

Q. All right.

A. (After consulting memorandum.) The requirements of the Carnegie Steel Company on the 1st day of July, 1912, were 30,600 tons of coke per day, six days per week.

Q. How many ovens would it take to supply that?

A. 15,000.

Q. How long would it take to develop a field of virgin coking coal sufficient to supply that?

A. 15,000?

Q. Yes.

A. That would depend largely on the location, largely on the man that was doing it and the amount of money that he wanted to spend.

Q. You gave an estimate for 400 ovens a while ago. Will you give an estimate on the same basis for this?

A. That would be 40 times that, would it not? That would be practically 40 times that, which would be sixteen thousand ovens, so that would be near enough; forty plants, at $800,000 each.

Q. It is the length of time that it would take to develop that region?

A. If they would carry them all on together, sixteen plants, 400 ovens each, they should do it all in two years; if they

would carry them all on together. I don't know whether that could be done or not. That is a bigger undertaking than I have ever tried.

Q. You don't know whether it would be possible to do that or not?

A. To carry them all on together? No.

Q. Down through 1901, 1902, 1903, 1904 and 1905, did not the steel manufacturers in the Pittsburgh district secure their coke primarily from the Connellsville and Klondike districts?

A. I think so; during all of those years we had to buy coke for our purposes. We could not make coke enough, with all the ovens we have got, we could not make coke enough to supply our furnaces. We have had to buy coke every year since the Corporation was organized until 1911.

Q. But my question was as to whether the steel manufacturers in the Pittsburgh district did not secure their coking coal during the years 1901 to 1905 inclusive primarily from the Connellsville and Klondike district?

A. I think they all did except Jones & Laughlin. I do not think Jones & Laughlin got any; they may have got some, but they have not any plants there.

Q. If I change the time down to 1897, what is your answer?

A. The same thing.

Q. Down to 1910?

A. The same thing.

Q. Down to October 26, 1911?

A. The same.

Q. When did you first go into the West Virginia district?

A. To operate?

Q. Yes.

A. 1902.

MR. REED: You mean Pocahontas?

THE WITNESS: Pocahontas, yes.

BY MR. COLTON:

Q. Is that the only district in West Virginia that you have operated in?

A. That is the only one.

Q. You were not in 1901 and 1902 very familiar with the West Virginia coking coal outside of the Pocahontas district?

A. Yes, I knew something about this Pittsburgh-Fairmont district. I had been there. I had been at the Pocahontas district. I think I had been to every coking district there was in West Virginia as early as 1892.

Q. How many coke ovens were there in West Virginia in 1901?

A. I could not tell you that. I will tell you, in the Pocahontas district, about 10,000 in 1901; that is my best recollection.

Q. And you do not know how that compared with the number of ovens in the rest of West Virginia?

A. I do not.

Q. And in 1902 you began to develop coke down there for the Corporation?

A. Yes.

Q. And how many coke ovens had you developed in the Pocahontas district by 1904?

A. 1904, I think we had perhaps five or six hundred completed. We made our first coke in August, 1903, and we built a total of 2,160 ovens, and I think by 1904 we had one plant completed and the second partially completed and in operation; that is my recollection of it.

Q. Where did the West Virginia coking coal go during the years 1897 to 1903, inclusive; where was it shipped?

A. I have not any idea, except I know some of it went to Chicago, and I know some went to Columbus; they have a number of furnaces on their own line down in that Pocahontas district, on the road; there are a number of furnaces there at Portsmouth and Hanging Rock, and Columbus is a regular customer of that district. There were two or three furnaces in Columbus.

Q. In general, it did not go into the Pittsburgh district?

A. I do not think it ever went into Pittsburgh. I do not think it ever has up to this time. The nearest we came to Pittsburgh with Pocahontas coal is at South Sharon. We are shipping coal to-day, and have been since we got that prop-

erty, to use in the by-product ovens at South Sharon, and we are also shipping to Wheeling. That is as near as the Pocahontas coal or coke comes to the Pittsburgh district.

Q. When did you begin to use that in the by-product ovens of South Sharon?

A. As soon as we discovered that the Pittsburgh coal alone would not make a metallurgical coke, and I think that was discovered and demonstrated beyond all question of doubt about 1906, it might have been earlier than that; not later than 1906, and ever since that time we have been shipping Pocahontas coking coal to South Sharon, Pennsylvania, to use in the by-product ovens mixed with Pittsburgh coal from the Klondike or lower part of the region.

Q. Do you have any idea how much coke West Virginia produced in 1901?

A. No. I only went back to 1911 in getting my statistics. In 1911 it only produced about—less than three million tons; I think it was two and three-quarter million or something like that. Alabama was first after Pennsylvania; Alabama comes first, then came West Virginia; that is my recollection for 1911, but I think you will find that West Virginia for a number of years was second to Pennsylvania.

MR. DICKINSON: It says here 2,291,000 tons.

THE WITNESS: Yes, 2,291,000 tons, and Alabama, 2,761,000 tons in 1911. I do not think, though, that is any criterion.

By MR. COLTON:

Q. I was just asking for your information.

A. I want to explain that. I think that——

MR. COLTON: There is no question asked. I object on the ground that anything further is not responsive to the question.

THE WITNESS: What I was going to say is that there are a large number of by-product ovens throughout the country, and many of them get their coal supply from the Pocahontas District, and while the West Virginia coke output is seemingly decreasing, the fact is that the coal output is increasing. For instance there is coke made in this State, New Jersey,

Michigan and Minnesota, made from coal from other States. Illinois has by-product ovens that buy from that district. I do not know whether New York and New Jersey do, but I am merely illustrating my point.

By Mr. Colton:

Q. Now, in 1901, do you know how much coking coal was produced in Tennessee?

A. I do not know anything about Tennessee coal.

Q. And for Kentucky in 1901?

A. I do not know anything about Kentucky.

Q. Do you know anything about it for any years in Tennessee?

A. Nothing except the report of 1911 or 1912 shows that there were something over 300,000 tons, I don't know which it was, that the company produced in Tennessee, either in 1911 or 1912, something over 300,000 tons.

Q. You do not know where that was used?

A. No, I do not.

Q. And you do not know whether it was 1911 or 1912?

A. 1911 or 1912.

Mr. Colton: We object to it for 1912 as irrelevant, and for 1911, so far as it applies to a time subsequent to October 26, 1911.

Mr. Reed: Do you think if the coal was there in 1912 that it is irrelevant on the ground of its having been there in 1911?

Mr. Colton: It is a question of known development.

By Mr. Colton:

Q. In other States than Pennsylvania, you spoke of coking coal being in various States. What do you know about coking coal in other States than Pennsylvania and West Virginia prior to 1906?

A. I do not know anything at all about the coking coal in any States outside of West Virginia and Pennsylvania, either prior to 1906 or subsequent to 1906, except what I get from the reports of the Government as to the acreage and the tonnage produced.

Q. You haven't given any figures from those reports.

A. I can.

Q. No, I don't want them.

A. I haven't given them. I have not been asked for them, but I could give them. I could say in a general way——

MR. COLTON: I object to that as not responsive to the question, and as volunteered.

RE-DIRECT EXAMINATION

By MR. REED:

Q. In 1901 did the Steel Corporation gain control of more coke ovens than it needed to supply its furnaces?

MR. COLTON: I object to that on the ground the witness has not been qualified to reply to that question for the various companies taken over by the Corporation, as to what their capacities were, and what the demands were.

THE WITNESS: The coke requirements of the United States Steel Corporation were put up to us to supply, and we did not have coking ovens enough to produce the coke required, and we bought coke from other producers and shipped to the different companies of the United States Steel Corporation, and several of the companies bought coke outside of what we manufactured and bought for them. Every year from the time when the Steel Corporation was organized in 1901, down to the present year we have bought coke to supply the requirements of the furnaces.

Q. Has that been because the Steel Corporation needed more coke than it could produce?

A. Because we did not have the capacity to produce it. The Illinois Steel Company bought from the Pocahontas Region; the National Tube Company bought from a by-product oven at Glasport. In the years 1902 and 1903 that was. In the year 1906 we bought about a million tons from producers in the Connellsville region, the Old and the New, in Westmoreland and Fayette counties, and needed it in addition to all we could produce to meet the requirements of the furnaces that year.

By Mr. Colton:

Q. The H. C. Frick Company sold coke from time to time after 1901?

A. Yes, sold coke in 1901, 1902 and 1903.

By Mr. Reed:

Q. What if any coke has it sold since 1903?

A. They are selling some this year, and last year, 1912, to the Pittsburgh Coal Company.

Q. From 1903, has it been selling any quantity to the Pittsburgh Coal Company?

A. They are getting about a thousand tons a day now.

Q. From 1903 to 1911, did it sell any coke?

A. It did not.

Q. What did it do with all the coke it made?

A. It shipped it to the plants of the United States Steel Corporation.

By Mr. Dickinson:

Q. How long did you say it had been selling to the Pittsburgh Coal Company?

A. It has run a year; it is running since July, 1911.

By Mr. Reed:

Q. It started in July, 1911?

A. Yes.

Q. Selling to the Pittsburgh Coal Company?

A. Yes; selling to the Pittsburgh Coal Company.

Q. What do they use it for?

A. They are selling it. The facts of it are that they had contracts, and we bought their property, and we took those contracts over and filled them, and one of them runs until the 1st of January, 1915, and the other expires on the 1st day of July of this year.

Q. Your company bought an acreage of coal from that company, did it not?

A. It bought nearly 16,000 acres.

Q. In 1911?

A. 1911, and they had some coke ovens and they had contracts that we assumed and supplied coke for.

Q. That is the reason you are selling this coke to them?

A. That is the reason.

Q. I do not know that I have put the question to you directly, Mr. Lynch. If not, I will do it now. What percentage of the coking coal of the old Connellsville and the lower Connellsville regions in 1901 was acquired or controlled by the United States Steel Corporation?

A. We had a total of nearly 61,000 acres, about 61,000 acres in 1901, in the whole four counties.

Q. No, I am not asking about the four counties. I mean the two counties, Fayette and Westmoreland.

A. Then we had 58,000 in Fayette and Westmoreland.

MR. DICKINSON: Was the question as to the acreage?

MR. REED: This question is as to acreage; yes, sir.

(By request, the stenographer read the pending question.)

By MR. REED:

Q. You had, then, 58,000 acres?

A. We had then 58,000 acres in what was known as the old and new or lower Connellsville region.

Q. Out of a total of how many acres, then, unmined?

A. I would say in the neighborhood of 180,000.

Q. About 180,000?

A. I would say in that neighborhood.

Q. And that takes into account no part of this half million four or five hundred thousand acres in Greene and Washington Counties?

A. Oh, entirely outside of that.

Q. That is entirely outside of that?

A. Entirely.

Q. In Greene and Washington Counties what was your percentage?

A. We had nothing in Washington County, and we had 2,000 acres in Greene.

Q. Out of about 300,000?

A. Yes; over 300,000.

Q. I do not know whether I have put the questions to you in quite that form before.

In giving your figures for 1911, Mr. Lynch, without going over that again, did you include the coal that had been bought from the Pittsburgh Coal Company?

A. Certainly.

Q. That is, in giving the figures of your company's condition and percentage and holdings in 1911 you included that purchase from the Pittsburgh Coal Company?

A. Certainly. That is included in our 72,000 acres.

Q. How many acres was it you bought?

A. 15,900 and some, from the Pittsburgh & Monongahela Coal Company.

Q. And that, you say, is a part of the 72,500 acres?

A. Yes.

MR. REED: That is all.

MR. DICKINSON: No, one moment. We shall want to examine him upon these new matters. We will continue his examination in the morning.

(Whereupon an adjournment was taken until to-morrow, Friday, June 20, 1913, at 10:30 a. m.)

EIGHTY-FIRST DAY.

EMPIRE BUILDING,
71 BROADWAY, NEW YORK CITY,
JUNE 20, 1913.

Before Special Examiner JOHN ARTHUR BROWN.

Present on behalf of the United States, MR. DICKINSON and MR. COLTON.

Present on behalf of the defendants, MR. LINDABURY, MR. SEVERANCE, MR. BOLLING and MR. REED.

THOMAS LYNCH,

the witness under examination at the taking of adjournment, resumed the stand.

REDIRECT EXAMINATION

By MR. REED:

Q. There are one or two questions that I want to ask, Mr. Lynch: You have testified that in 1911 you bought some 16,000 acres of coking coal lands from the Pittsburgh Coal Company?

A. Yes, sir.

Q. And that after the purchase you fulfilled some of their current contracts for coke?

A. Yes, sir.

Q. When those contracts came to an end by their own terms, did you renew them?

A. They are not ended yet.

Q. Was any investigation made by the Federal Government into that purchase from the Pittsburgh Coal Company?

MR. DICKINSON: That is objected to as irrelevant.

THE WITNESS: Yes, sir; I think a special grand jury was called to investigate it in Pittsburgh. I won't be positive

about a special grand jury, but there was a grand jury investigation, and some special counsel for the Government came there to assist Mr. Jordan, I believe, who was the United States District Attorney.

By Mr. Reed:

Q. You mean some special counsel from the Department of Justice at Washington?

A. I don't know whether he was from Washington or where, but he was some special man that came in there.

Q. Did anything ever come of it after that investigation?

Mr. Colton: Just a moment, I object on the ground that the records of the District Attorney's office in Pittsburgh are the best evidence of what transpired before the grand jury.

The Witness: Nothing came of it so far as we knew. I knew very little about it. We had some sort of a summons served on us, and that is about all I knew about it. We were not called to testify or to give any information about it.

By Mr. Reed:

Q. In asking you about the measures taken by your company for safety work and for the protection of your men in the mines, I believe you testified that the results that you got were unequaled either in this country or abroad.

A. Something to that effect, yes, sir.

Q. Now I want to ask you to give us the figures; to tell us, if you know, the statistics showing, say, the ratio of fatal accidents to tonnage produced.

Mr. Colton: Just a moment. I except to that as irrelevant and to the witness as incompetent.

By Mr. Reed:

Q. Have you any such figures for your company, for say the year 1911?

A. I have. I have the figures for the H. C. Frick Coke Company and the State of Pennsylvania, taken from the Mine Inspector's Report of the State of Pennsylvania for the year 1911.

Q. In that year, 1911, what was, for the whole State of

Pennsylvania, the ratio between tonnage produced and the number of fatal accidents.

MR. COLTON: I object to any testimony on the subject other than as to his own company, on the ground that the reports are the best evidence, and on the further ground that it is not shown that the conditions of operations in the other mines were the same as those in the mines of the Corporation, or that the difference was not due to natural or artificial conditions in said mine.

THE WITNESS: The question is as to the State of Pennsylvania?

By MR. REED:

Q. Yes.

A. For the year 1911, 3.62 fatalities per million tons of coal produced in the bituminous mines of Pennsylvania.

Q. Mr. Lynch, have you made inquiry to learn what the number of fatal accidents per million tons was in Great Britain in 1911?

A. I have a record here. At this moment I cannot say where it came from—showing——

MR. COLTON: I object to his stating what it shows, on the ground that the original is the best evidence, and on the further ground that in this case he does not know where he got it.

By MR. REED:

Q. Go ahead.

A. For the year 1911, Great Britain showed 4.47 fatalities per million tons.

Q. You do not, at this moment, remember where you got this record?

A. I could not find it in my papers. I got it in some of these Government reports, but I could not lay my hands on it to give the reference, as I can with the others.

Q. Now, Mr. Lynch, what was the ratio in your company in that same year?

MR. DICKINSON: Objected to as irrelevant.

THE WITNESS: In 1911 the H. C. Frick Coke Company, 1.58

fatalities per million tons produced. Do you want the United States?

By MR. REED:

Q. Have you figures for the whole United States?

A. I have figures for the whole United States from the United States reports, pamphlet 48, Department of the Interior, Bureau of Mines, coal mine accidents, for the whole United States, 1911, 5.48.

MR. REED: You may cross-examine, Mr. Colton.

RECROSS EXAMINATION

By MR. COLTON:

Q. What do you understand the expression "The entire Connellsville region" to include?

A. What I have shown here on this map, my figures and ovens and all are in that territory.

Q. I want it designated by territory, the entire Connellsville region.

A. From Point Marion to Latrobe.

Q. That includes the entire Klondike, does it?

A. No; I am coming to the Klondike. This is the old Connellsville, the limit. Then the Klondike or Lower Connellsville——

MR. REED: Mr. Lynch has already described that in the testimony yesterday, and I do not believe that Mr. Colton is asking for that at all.

By MR. COLTON:

Q. What we want is what is meant by the entire Connellsville basin, if you know?

A. What I included in the entire Connellsville basin, when I undertook to give ovens and so forth in that, I included from Latrobe to this Point Marion, and all this Lower Connellsville, clear up to the Greene County Line.

Q. I understand the Lower Connellsville region to be the same as the Klondike region?

A. The same thing, yes.

Q. Is that the way they designated the entire Connellsville basin in 1901?

A. No.

Q. What was the entire Connellsville basin in 1901?

A. From Latrobe to Point Marion; that is what they called the Connellsville Basin.

MR. DICKINSON: That is a straight line.

MR. COLTON: He has already described the width.

By MR. COLTON:

Q. What was the entire Connellsville basin in 1902?

A. The same thing.

Q. When did the entire Connellsville basin come to include the lower Connellsville region, if at all?

A. It started in about 1899, and as soon as it became more and more developed they put it all in their figures.

Q. In 1902 the Connellsville basin included a part of the lower Connellsville district, did it not; is that right?

A. Yes.

Q. And in 1901 it included a part of it?

A. Yes.

Q. That portion of it that was developed was included as it was developed?

A. I do not think they undertook to talk about acres; they talked about ovens. I gave you 2,000 ovens there in 1901, and they began to increase; our own companies were building at that time, and how many additional we had in 1902 I could not tell you.

Q. What I am getting at is whether as the lower Connellsville developed it was included in the old Connellsville basin.

A. Yes.

Q. You testified that the old Connellsville and the lower Connellsville coke fields were in 1899 by far the most valuable coke fields in Pennsylvania. Was that also the case in 1901?

A. Yes.

Q. You also testified that the old Connellsville and the lower Connellsville coke fields were in 1899 seven or eight

times as valuable as the coke fields in Greene county, judging by the price per acre?

A. Yes.

Q. Was that also the case in 1901?

A. It was. In 1901? No, I would not say that there was that difference in the price between the lower Connellsville and Greene county in 1901.

Q. But there was that difference between the old Connellsville district and Greene county in 1901?

A. I should think so, yes.

Q. In Washington county the coke fields were even less valuable than they were in Greene county?

A. Yes. I think they sold for a less price at that time.

Q. And that was the case in 1901?

A. I do not think there was very much difference in 1901.

Q. Between Greene county and Washington county?

A. No.

Q. According to your best information and belief, on July 11, 1902, was it not a fact that the Connellsville coke properties of the United States Steel Corporation could not be duplicated at any price for the reason that there were at that time less than 15,000 acres of unmined coking coal in the entire Connellsville region outside of the holdings of the subsidiaries of the United States Steel Corporation?

MR. REED: May I have that question read?

(The pending question was read by the stenographer.)

MR. REED: Mr. Lynch has just described the whole Connellsville basin as including all the lower basin.

THE WITNESS: No, I don't think I did. I made that statement as to 1902, and I say then it was correct, and I will say now it is correct. It was less than 15,000 acres in the old Connellsville basin at that time, and I so testified yesterday.

MR. REED: If you will listen to the questions you will see that is not what Mr. Colton asked you.

THE WITNESS: That is what he asked me, quoting from my affidavit there.

(The pending question was again repeated by the stenographer.)

MR. REED: I want to call the witness' attention to——

MR. DICKINSON: I object to your interrupting the cross-examination in that way.

MR. REED: But I think he is entitled to hear the question.

MR. DICKINSON: The question can be read if the witness has not understood it, but the witness is ours and he is under cross-examination and I do not think that counsel should do any more than to have it repeated.

MR. REED: Does the Government mean that it is going to try to take advantage of Mr. Lynch's failure to hear the question?

MR. COLTON: No; the witness can have the question read.

THE WITNESS: I think I understand the question. We were talking about——

(The pending question was again repeated by the stenographer.)

By MR. COLTON:

Q. Will you answer the question?

A. I have answered the question, that the statement of July, 1902, was correct then, and I still say it was correct.

Q. This statement I have just made to you in the form of a question is correct?

A. Yes, that at that time there was not over 15,000 acres in the Connellsville basin, what we knew as the Connellsville basin, outside of what was owned by the Corporation.

Q. On July 11th, 1902, wasn't it a fact that the coke properties owned by the subsidiaries of the United States Steel Corporation could not be duplicated or replaced in any locality in the United States at any price?

A. I believe that; I think that was true then.

Q. On July 11th, 1902, wasn't it a fact that the coking coal in the Old Connellsville region was worth twice as much per acre as the coking coal in the Lower Connellsville District?

A. Well, 1902, about, yes. I think that about that time the price of the Lower was about half the price of the Connellsville. That is my best recollection.

Q. I understood you to say that as the Lower Connellsville

District was developed it became included in the Connellsville Basin?

A. Yes.

Q. What did you know about the average yield per acre of coking coal in the Lower Connellsville District in April, 1901?

A. I did not know anything about it then. I had not very much experience with it then.

Q. What did you know about the average yield per acre in Greene County, in April, 1901?

A. I did not know anything about it.

Q. Did anybody know anything about it?

A. Yes, in this way: The thickness of coal was known, but I did not know anything about it from actual mining it out and turning it into coke. We knew how thick our coal was there; we drilled——

Q. (Interposing.) In what county?

A. Greene County. We are talking about Greene County, aren't we?

Q. What kind of coal did you think you had in Greene County at that time?

A. Well, we could class it most anything you wanted; we used it for steam; we used it for gas; we used it for coke.

Q. But you did, as a matter of fact, class it as steam and gas coal, didn't you?

A. I did at one time, and for certain reasons I think that is apparent in my statement——

Q. (Interposing.) And that classification was a proper classification at that time, wasn't it?

A. No, we were putting it more relative to the price than we were as to the use of the coal. We classed so much at a certain price, and so much more at another price, and so much more at another price; that is my recollection of it. We were putting the value on it; we were not defining its special use for special purposes.

Q. But as a matter of fact at that time you defined the 22,550 acres which you had in Allegheny, Washington and Greene Counties, as steam and gas coal, did you not?

A. Yes, sir.

Q. Mr. Lynch, the various competing coke companies which were acquired by the H. C. Frick Coke Company prior to 1893 were all located in the Old Connellsville District, were they not?

A. Every one, prior to 1897, yes, sir.

Q. And many of those companies were acquired between 1890 and 1897?

A. No. The largest of those were all taken over before 1890.

Q. The largest were all taken over?

A. Yes.

Q. How about the McClure Coke Company?

A. It was taken over in 1895.

Q. That was a large company?

A. It was not as large as some others; they had 4,000 acres, and we took over the Connellsville Coke & Iron Company in 1889 with about 12,000 acres, and took in 1883 over the Connellsville Gas, Coal & Coke Company and A. A. Hutchinson & Brothers. Those together had something like—my recollection is, that is a good while ago, 1883—10,000 acres. In fact I think we took over more coal in the year 1883 than any subsequent year.

Q. You took over several during 1893, 1894, 1895 and 1896, didn't you?

A. No, I do not think so. I do not think we took over anything. Let me see now. We took over Schoonmaker.

Q. When did you take over Schoonmaker?

A. In 1889. Connellsville Coke & Iron Company in 1889. Moore, in 1889. I think the Fairchance Furnace Company, and perhaps the Oliphant Furnace Company, both very small —Fairchance I think had less than 200 acres, and 142 coke ovens; I think they were taken over in 1890 or 1891, and I do not believe as I can now recall, if we did take them over in that period, I do not know of any others up until 1895, October, 1895, when we took over the McClure Company.

Q. And that was one of your largest competitors at that time?

A. At that time it was; it had the largest number of ovens, but I do not think it was the largest in acreage

Q. Just a moment, and I will refer you to some others that you named. I will find them and come back to that later. Mr. Lynch, in 1902, after the H. C. Frick Coke Company had acquired the McClure Coke Company, and after the various coke companies that came into the Corporation had all been combined under one control the price of coke for the year 1902 was advanced to such a point that the Connellsville Coke showed a profit to the producer of at least $1.25 a ton at the then prevailing market price, did it not?

A. Yes, sir.

Mr. Colton: I would like to read, subject to correction, a statement from the Stanley Hearings in reference to the executive committee meetings of the United States Steel Corporation. We can send downstairs and get the book, if you so desire.

Mr. Reed: Just a moment, Mr. Colton. Before you go into that, I would like to have the stenographer read the last question.

(The stenographer repeated the question referred to as follows):

"Q. Mr. Lynch, in 1902, after the H. C. Frick Coke Company had acquired the McClure Coke Company, and after the various coke companies that came into the Corporation had all been combined under one control, the price of coke for the year 1902 was advanced to such a point that the Connellsville coke showed a profit to the producer of at least $1.25 per ton at the then prevailing market price, did it not?"

Mr. Reed: You do not mean that, Mr. Colton?

Mr. Colton: Yes, I mean what I said. If you want to straighten it out in any way on redirect examination, that is your privilege, if you think it calls for it; but I object to your making a suggestion to the witness during my cross-examination.

By Mr. Colton:

Q. What is your answer, Mr. Lynch?

A. Yes; I——

Mr. Reed: Wait a moment; you have answered the question. You have answered the question as you wanted to and you have lost

the chance to answer any more until I give you the opportunity.

MR. COLTON: Mr. Reed, I ask for the privilege of reading from the executive committee minutes as reported in the Stanley hearing, subject to correction.

MR. REED: Of course we will correct it if we find it is wrong.

MR. COLTON: (Reading) "Executive Committee Minutes of the United States Steel Corporation; present, Gary, et al." Of course that would mean present a number of people. This is from the hearings of the Stanley Committee, Volume 53, part 2.

MR. REED: What warrant is there in your knowledge of Latin for the statement that the term "et al." means a number of people?

MR. COLTON: "Alius."

MR. DICKINSON: Maybe it was "alii."

MR. COLTON: It might be "alius" and it would at least mean "others."

MR. REED: It might mean Judge Gary and one other person.

MR. COLTON: Possibly. (Reading) "Coal and coke property consolidation. Mr. Lynch has seemed to feel that, with the values that were finally determined upon in regard to coke and coal properties, that he had a larger burden than he would be able to carry, and that he will not be able to make a showing that will be satisfactory as manager of the coke and coal property."

Was it due to the values that were put upon the property that you believed you would have difficulty in making a showing?

MR. REED: I object to that as an improper use of the record. I also object to reading from the record in cross-examination of the witness, because it appears that the witness was not present at that meeting, and did not make that statement.

THE WITNESS: When was this?

By MR. COLTON:

Q. July 3, 1901.

A. I am not certain that I know anything at all about it.

Q. You have forgotten whatever burden was put upon you at that time in reference to values?

A. No; I have an indistinct recollection. I want to tell you all about it; we have not anything to hide here. I have an indistinct recollection that we had a scheme about that time for the Frick Coke Company to buy the property of these other companies that came in the Corporation, and that necessitated putting obligations on the Frick Coke Company for the purchase money; and of course it carried with it a big interest charge. We discussed that plan. Subsequently it was found that we could merge, under the laws of the State of Pennsylvania, which we did. If that minute does not refer to that tentative proposition that was up, I do not know what it referred to. That is all I know about it.

Q. Did you name, this morning, the Bliss-Marshall Coke Company?

A. Yes; I think I called it, though, the Oliphant Furnace.

Q. You have stated the time that was taken over?

A. I think that was taken over in 1890, Mr. Colton, but I will not be positive. It might have been 1889. It was surely not later than 1890.

Q. And the A. A. Hutchinson——

A. In 1883.

Q. I would like you to point out and designate on the map, stating the town and place, so that we will know what we are talking about on the record, what mines were opened in Greene county in 1901?

A. None. Yes, I think there was one. I won't be positive when it was opened, but I think there was one mine opened in Greene county for some years back.

Q. Do you know where it was?

A. Yes, sir, I know about where it was. The Dillworth mine. I think perhaps it will be marked on the map here. I think it is marked here. (After examining map.) It does not seem to be marked. It is in this neighborhood here some place (indicating on map).

Q. Near Millsboro?

MR. REED: That is Fayette county there.

THE WITNESS: I know; but I am following up this river. It was in here somewhere, Mr. Colton. I cannot just fix it. It is not marked on the map.

By MR. COLTON:

Q. It was near the Lower Connellsville District, then, was it?

A. Yes, sir.

Q. And near Fayette county?

A. Let me see how I shall describe it. It is right across the river from Fayette county.

Q. And the Klondike region?

A. Yes.

Q. Do you know anything about how much coal was taken out of that mine?

A. No, I do not know. I don't think there was very much.

Q. Did you at that time know anything about the thickness of its vein?

A. I did not. I never did. I do not know now.

Q. Did you know anything about the thickness of the vein in Greene county of any of the coal seams at that time?

A. Yes, I know in a general way what the thickness of the Pittsburgh coal seam was in 1900.

Q. You knew in a general way. What did you base your conclusion on?

A. From records that had been made and from the general character of the Pittsburgh seam.

Q. That is, you based your conclusion partly on what existed there in the Connellsville district, and just assumed, as a matter of inference, that the same sort of conditions would exist in Greene county?

A. I think you might perhaps say assumed, but I hardly think that it would be a positive statement that could be made; the thickness of the coal seam was known——

Q. Where was it known?

MR. REED: Let him finish.

THE WITNESS It was known across the river from it.

MR. REED: You were about to say something else.

THE WITNESS: Yes. Everybody knew the thickness of the Pittsburgh vein of coal.

By MR. COLTON:

Q. What I am trying to get at about it is what they knew about the thickness of the coal over in Greene county. They knew the thickness of the coal in the Klondike, and they knew the thickness of the coal here in the Old Connellsville. What did they know about the thickness of the coal over in Greene county?

A. They knew that coal in Greene county to run from seven to nine feet thick.

Q. How did they know that?

A. Because they knew what the general characteristics of the Pittsburgh seam were. How do we know about the thickness here (indicating)? You might just ask me what I know about what the thickness of the coal was a mile back on the other side from where the opening was. We knew in a general way what it was; we would not be six inches away from it.

Q. You did not know at that time by actual conditions how far the coal extended in Greene county?

A. No. I made no testings of that kind.

Q. So that everything you have on the subject is hearsay?

A. What do you mean by that?

Q. That is, you do not know it yourself?

A. I do know it.

Q. You had not made any testings over there?

A. We had not.

Q. Who had made testings over there?

A. I do not know that I can name the parties.

Q. I would like you also to state, looking at the map, where the thick vein is designated, and designate the thin vein on the map.

A. Beginning with the Connellsville District, all shown as the Connellsville between Latrobe and Point Marion, all in the lower Klondike.

Q. Take the Old Connellsville District first, and describe how the vein runs there in reference to thickness?

A. In the northern end, beginning at Latrobe, we find the thinnest. It gets down to as low as seven feet. Then we

find farther south in the Mount Pleasant region, we have a locality or territory where we have six and a half feet.

Q. Stop before you get into the Lower Connellsville, because I want to ask you another question.

A. All of this from Scottdale clear down is thick vein. That is still the Connellsville District.

Q. How does it range in thickness between Scottdale and the last town that you named?

A. I do not think there is any difference. I think it is pretty near uniform in thickness. I think it will average eight feet, I should say.

Q. But there are variations in the lower Connellsville district?

A. There are variations between that and Smithfield and variations between Scottdale and Latrobe, but they are local and do not change the average thickness, that we place on the average yield per acre, that we get out of the whole.

Q. When we are speaking of this entire district you have just spoken of, that is the old Connellsville district in which the Corporation owned 66 2-3 per cent. in 1901?

A. Yes.

Q. Now, take up the Lower Connellsville district.

A. In the Lower Connellsville district, so far as I know, there is not any substantial variation in the thickness of the coal. Up about Brownsville we have about seven feet of coal, and then when we come into the territory of Edenborn and around the Masontown district, we have the same between those points as we have from Scottdale to New Geneva in Connellsville. Going north it is somewhat thinner until around in this West Newtown field, or Scott Haven, and in that section it gets down to about six and a half feet.

Q. And there are variations between Brownsville and Scott Haven?

A. Yes, some slight variations in that.

Q. Where is the United States Steel Corporation property in the lower Connellsville district?

A. It is scattered from Brownsville. We haven't anything below Brownsville in that lower Connellsville field until we get down to Washington County. We have some there.

Q. Now, you said so far as you knew between Brownsville, as I understood it, and Masontown, the thickness was about the same on a general average?

A. Yes.

Q. Now, what do you own, about, in that region?

A. I think we have eleven mines.

Q. You have eleven mines of your own there?

A. Yes.

Q. And those are developed mines out of which you have taken considerable tonnage?

A. Every bit of coal we have in Fayette County, except one tract, every bit of coal we have in Westmoreland County, every bit of coal that we have in the whole district, coking coal, has improvements on it and now has plants on to work it out, except one tract in Fayette, known as the Mount Braddock, and our Greene County and Washington County tracts, we have no plants on them at all; all we have in Fayette and Westmoreland have plants on them to work them out, all fully developed and improved, except one tract in Mount Braddock.

Q. Now, take up Greene County; give the way the seam runs in Greene County.

A. Yes, sir.

Q. If you know.

A. I know in a general way. I have seen our own drill holes that we made. I have had reports of others. If you mean by knowing the drill holes I have put down, and actual measurements, then I will answer your question that I do not know.

Q. Go ahead and give it as far as you know.

A. As far as I know, Greene County has very slight, if any, variations clear across here in the thickness of this coal.

Q. How far have you tested that, under your own supervision?

A. I have only had one or two tests made under our own supervision, but I have seen perhaps half a dozen scattered through there.

Q. Designate the place you have seen tests there.

A. I do not know that I can locate them.

MR. REED: When you speak of tests, Mr. Colton, do you mean to include outcrop measurements?

MR. COLTON: I mean just what he means by "tests."

THE WITNESS: Our properties are on Little Whitely Creek; I cannot see it here on this map.

By MR. COLTON:

Q. That is comparatively near to the Connellsville district, isn't it?

A. It is up the river. Then we have had samples and measurements of coal on the outcrop on Dunkard's Creek.

Q. You are located on Whitely Creek as shown on your map?

A. Yes; that is where we have made our actual tests, and we have had men on the outcrop; I have not been there—on the Dunkard's Creek, and we have measurements and tests of the Poland Coke Company openings, of the Crucible Steel's openings, and of the first mine opened in Greene County known as the Dilworth.

Q. Prior to October 26, 1911, do you know about how much coke and coal had been taken out from Greene County?

A. Very little.

Q. How about Washington County?

A. A quantity of coke and coal has been taken out from there, quite a tonnage.

Q. Chiefly by Jones & Laughlin?

A. Yes, I would say chiefly by Jones & Laughlin, both in size of operation and tonnage.

Q. Now, taking your personal knowledge, I include for the purpose of this question both the knowledge that you got from your own employees, and your own knowledge, it is much greater in the Lower Connellsville region than it is in Greene County and Washington County?

A. Yes.

Q. You speak with much greater authority in regard to these counties than you do in regard to Greene or Washington Counties?

A. I am more positive, perhaps.

Q. In 1902 you knew the average yield per acre in the Old Connellsville district to be about 7,500 tons per acre?

A. Yes; that is what we figure yet, about 7,500 tons an acre.

Q. And as to the rest of the district included within the blue line on the map, including the counties of Westmoreland, Fayette, Washington and Greene, you did not know what the average yield per acre was?

A. I think we knew absolutetly a large part of the territory, and we knew in a general way about all of it.

Q. In 1902 you knew the average yield in the lower Connellsville district?

A. We did in a general way, yes.

Q. You did not know it from actual experience?

A. Not like we know it now, after ten years.

Q. And in Greene County and Washington County so far as you were concerned, it was a speculation, wasn't it, as to the average yield per acre?

A. You could hardly put it that way. Mining people can figure the tons per acre yield from the thickness.

Q. But no mines were opened up there in Greene County with the exception of one?

A. Not more than one, if it was opened up. I do not know that it was opened up; but there was outcrop there.

Q. When you see an outcrop, do you know how far it is going to run?

A. You can count on it pretty close.

Q. It is mere speculation?

A. Not mere speculation; you can put your money on it. In the Pittsburgh coal you get an outcrop of eight feet of coal and you go up two or three or five or ten miles, and you find another outcrop of eight feet; you can put your money on it.

Q. But at that time, in putting your money on it, in the old Connellsville district, it was like eight to one, compared with the Pittsburgh Coal?

A. Yes.

By Mr. Reed:

Q. What other information as to the thickness of the coal in Washington County had you beside the outcrops and the mines that were then being worked?

A. I had two or three drill holes that we had made ourselves.

Q. That is, test drill holes?

A. Yes.

Q. Will you state whether there was any oil and gas development in those counties?

A. Oh, yes; there was for quite a number of years, but I did not have the results of those tests personally; I am not speaking of my own personal knowledge. I should say we knew about them in a general way.

Q. The result of those oil and gas well drillings were available to people who wanted them?

A. They were known to people who wanted them, and were available.

Q. Mr. Colton got an answer from you to the effect that the Connellsville Basin included the Klondike or lower Connellsville?

A. Yes, sir.

Q. He also got an answer from you that in 1902 in the Connellsville basin there were not 15,000 acres that were not owned by the United States Steel Corporation.

A. Yes, sir.

Q. Yesterday you testified that——

MR. COLTON: Will you quote his testimony yesterday, Mr. Reed, instead of summarizing it?

MR. REED: Yes, I can quote it from memory.

Q. Yesterday you testified that 58,000 acres out of 180,000 acres in the old and Lower Connellsville districts were owned by the Steel Corporation?

A. Yes, sir.

Q. What has become of that odd 100,000 acres over night, Mr. Lynch?

A. Still there.

Q. I am not joking. What I mean is this. Did you testify that of the old Connellsville district——

MR. COLTON: (Interposing) I object to the question as to form.

A. I mean what I tried to say here, that in 1902 I made an affidavit that the Corporation companies controlled coal in what was known as the Connellsville coke region except about 15,000 acres at that time, I said the same thing yesterday, and I have said the same thing to-day, and I have said and I say now that we are talking about this Connellsville Basin that I described on this map, I suppose half a dozen times, and there is this additional acreage here, which if Mr. Colton will want to be fair with me—ten years ago, I don't remember—I think he will say that in the same affidavit I told how many acres there were in that district belonging to the Corporation. That is ten years ago.

By Mr. Colton:

Q. I will let you see your affidavit in regard to the Connellsville District.

A. Didn't I say that there were 15,000 acres in the Klondike; I think I did.

Q. You can look at the affidavit and see what you said.

Mr. Reed: Before you read this I want you to listen while I ask this question.

Mr. Colton: He wanted to see what he said in his affidavit.

Mr. Reed: All right; let him read it.

(The witness reads the affidavit to himself.)

The Witness: That is all right. I made it plain enough.

By Mr. Reed:

Q. You made it plain to yourself, but you have not made it plain to my feeble intellect. You defined the Connellsville District as including the Klondike?

A. Yes.

Q. And then you stated in answer to the next question that in the Connellsville District there were not 15,000 acres not owned by the Steel Corporation.

Mr. Colton: Before you answer I want to object to this arguing with the defendant's own witness. He has testified in regard to what the Connellsville District was and what it included in 1901 and 1902 over and over again on cross examination, and I object to counsel for the defendant arguing with his own witness.

MR. REED: He has made it very plain, and by a question which, quite unintentionally no doubt on your part, but actually was something of a trick question, you got him into——

MR. COLTON: There was not anything tricky in the form of the question, was there?

MR. REED: I think there was, and when I tried to call attention to it and straighten it out you objected. Now I am trying to do it on redirect.

By MR. REED:

Q. When you said that in the Connellsville basin there were not 15,000 acres owned by companies outside of the Steel Corporation, did you mean to include the Lower Connellsville or the Klondike?

A. Certainly not, Mr. Reed. That was apparent on its face that we did not include the Lower Connellsville.

MR. COLTON: I was speaking about and asked about the Connelleville Basin in 1901 and 1902, and I object on the ground that my question was not properly quoted.

By MR. REED:

Q. I want to read to you from your affidavit in the Hodge suit, which Mr. Colton has quoted to you, the following statement:

"The above valuations are figured on the basis now asked for similar coal lands in the several localities. In fact the Connellsville properties could not be duplicated at any price, for the reason that there is less than 15,000 acres of unmined coal in the entire Connellsville Basin, outside of the holdings of the subsidiary companies of the United States Steel Corporation."

By the term "entire Connellsville basin" as used in that paragraph of the affidavit, did you or did you not mean to include the Klondike or the Lower Connellsville?

A. Certainly not. I was referring to the old Connellsville.

Q. Mr. Colton has also asked you whether, after the acquisition of the McClure Coke Company the price of coke——

MR. COLTON: That is not the whole of my question. If you are going to quote me you might qoute me accurately.

MR. REED: Would you mind waiting a moment, Mr. Colton, until I finish my question.

By MR. REED:

Q. Mr. Colton has also asked you whether after the acquisition of the McClure Coke Company the price of coke advanced in the year 1903, and you answered "Yes." When was the McClure Coke Company bought?

A. 1895.

Q. Did that have anything to do with the advance in prices eight years afterwards?

A. It had nothing to do with it. I understood that it was after the purchase of the McClure Coke Company. Of course 1902 was subsequent to 1895. I understood that.

MR. COLTON: Just a moment. I object on the ground that the question did not include the whole of my question. There was also a combination of the properties of the various subsidiaries, taking out of the market upwards of two-thirds of the entire developed coke lands in the Connellsville District, and I included that in my question.

THE WITNESS: Shall I answer?

MR. REED: That is an objection. That is not a question.

By MR. REED:

Q. Did the combination of the different subsidiaries of the Steel Corporation have any effect on the market in coke, Mr. Lynch, in 1901, 1902 or 1903?

MR. COLTON: I object on the ground that the witness has not been shown to be qualified to testify what was the effect.

THE WITNESS: The acquisition of the property by the Steel Corporation, so far as I knew, had no effect upon the price of coke. The product was not taken out of the market. It was producing its fullest capacity that it could possibly produce. They were shipping it and using it. They were not able to run to their full capacity. Nobody ran to their full capacity in 1901, 1902 and 1903, because of the inability of the railroads to furnish transportation. It was the great demand for coke during those years, in my judgment, that made the price. It was shown, as I stated yesterday, there

was a period, I think perhaps in 1903, when the market price of coke went up to $11 and $12 a ton. In that period we had, in addition to the great scarcity of cars, the incapacity of the railroads, the anthracite coal strike to contend with.

MR. COLTON: Have you finished?

THE WITNESS: Yes.

MR. COLTON: I object to the answer of the witness so far as it relates to the period subsequent to July 11, 1902, as based on a different time from that concerning which I asked him.

MR. REED: That is all, Mr. Lynch.

By MR. COLTON:

Q. Mr. Lynch, you made an affidavit containing the following:

"The coke properties of the subsidiary companies of the United States Steel Corporation situated in Westmoreland and Fayette counties, Pennsylvania (Connellsville region), and in McDowell County, West Virginia (Pocahontas region) consist of 42,000 acres (Connellsville coal)."

Did you not?

A. I think so. I made the affidavit, and that is my recollection of what I stated. Whatever is said there I will stand by.

Q. That is in 1902, July 11. In that same affidavit you did testify, did you not, that the "above valuations were figured on prices now asked for similar coal land in the several localities; in fact, the Connellsville property could not be duplicated at any price, for the reason that there is less than 15,000 acres of unmined coal in the entire Connellsville basin, outside of the holdings of the subsidiaries of the United States Steel Corporation"?

A. Yes.

Q. At that time you regarded the old Connellsville coking coal as decidedly superior to any other coking coal?

A. I did.

Q. And of that the Steel Corporation controlled fully 66⅔ per cent?

A. I think a little more than that.

Q. Do you know how many acres there were in the old Connellsville region July 11, 1902?

A. According to that it would be about 60,000 acres.

Q. 57,000 acres?

A. Whatever it was there.

Q. 15,000 and 42,000 would be 57,000?

A. Yes.

MR. COLTON: That is all.

By MR. REED:

Q. Do you regard the old Connellsville as better than the lower Connellsville?

A. At that time? I thought I did.

Q. Do you now?

A. No; we have some in the old Connellsville which is poorer than anything in the new, and we have some in the new that is as good as anything in the old.

MR. REED: I offer in evidence Exhibit No. 88, the plan produced by the witness.

(The plan referred to was thereupon marked "Defendants' Exhibit (Lynch) No. 88, June 20, 1913," and will be found in the volume of exhibits.)

JOHN W. BOILEAU,

a witness called on behalf of the defendants, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. REED:

Q. Where do you live?

A. Pittsburgh.

Q. How long have you lived there?

A. Twenty-one years in Pittsburgh and vicinity.

Q. Prior to that where did you live?

A. In Ohio.

Q. What is your business?

A. The coal land business, coal and coke engineer; regarded as a coal and coke expert.

Q. How long have you been a coal and coke expert and engineer?

A. About sixteen or seventeen years.

Q. Are you employed by the Steel Corporation?

A. No.

Q. I believe you testified before the Stanley Committee, did you not?

A. I did.

Q. Subpoenaed by Mr. Stanley?

A. Yes.

Q. Are you familiar with the coking coal deposits in Westmoreland County, Pennsylvania?

A. Yes; I am personally acquainted with conditions existing, so far as concerns physical and geological conditions.

Q. And in Fayette County?

A. Yes, the same.

Q. And in Greene County?

A. Yes.

Q. And Washington County?

A. Yes.

Q. And in that part of the State of West Virginia which lies immediately south of Fayette and Greene Counties, Pennsylvania?

A. Yes.

Q. How much coking coal is there at present unmined in Westmoreland County, Pennsylvania?

MR. COLTON: We except to that as irrelevant.

THE WITNESS: Allow me to preface my answer by saying that in April, 1912, I took my office force and scattered them around the different county seats, taking from the assessment records the acreage, as held by corporations or individuals, of unmined coal. In so doing I found that most of the property was not assessed as I thought it should be assessed, as I had personal information through my property plans, but that was none of my business and I paid no attention to it; and in aggregating the various assessments we checked up the various holdings. I did not check it up individually as to the various qualities of coal except to estimate and measure up through and scale the points that would

bound within safety the various kinds of steam, gas and coking coal. I cannot give it definitely from memory, because I did not bring the book, regarding Westmoreland, as well as I can the other counties, as in Fayette County, of the unmined coal, of which there was on my list at that time a little over 90,000 acres. The Westmoreland part of it, because of the outcrop in the Irwin basin, and the entire outcrop around Greensburg, was all practically the peninsula outcrop of the Latrobe basin; I could not give a fair statement of it, and I think so far as the Steel Corporation's holdings are concerned that their own records will give their area there the same as it would elsewhere.

MR. COLTON: I want to object to his answer as hearsay.

MR. REED: Cannot you manage in some way to get in objections either before or after?

MR. COLTON: You do not want me to interrupt the witness, and you begin as soon as he finishes. I must either interrupt the witness or else have a chance to object after he gets through.

MR. REED: Very well.

MR. COLTON: We object to the answer as hearsay and based upon the reports of others, and so far as it is based on State assessments, on the ground that the assessments are the best evidence.

By MR. REED:

Q. In Fayette County, are you familiar with the ownerships of the various tracts of coking coal?

A. I am. I have appraised the independent operating plants, the mines, the buildings, equipments and machinery and the coal, and the mine and property plants within the last four years, the entire situation.

Q. Can you state how many acres of unmined coal the H. C. Frick Coke Company now owns or controls in Fayette County?

A. Approximately 50,000 acres.

Q. Have you had any experience across the river in Greene County?

A. Beginning in 1896, my first trip into Greene County.

In 1897 I had charge of a survey, east and west through three different routes through the county. In doing so I became interested in the coal. In 1898 I took up options on more than 100,000 acres in eastern Greene County, but because of the prejudice against it, although the river only divided it from Fayette County south, I could get no one to become financially interested with me, but in 1899 I succeeded in selling 33,000 acres in six separate tracts. This was all inland from the river.

Q. This was in Greene County?

A. This was in Greene County. This was about the time of the oil excitement, along in 1897, 1898, 1899 and 1900, in eastern Greene County. I had been a student of geology and engineering, and I decided that across the river was just as good coal as on the Fayette County side, because geologically speaking, the basins of the coal, because of the nature of the Chestnut Ridge anticline running northeast and southwest would naturally take the lower Connellsvillle field across the Monongahela River into Greene County, and correspond especially with practically the eastern area of Belle Vernon anticline up in that direction. Then again the outcrop at Millsboro in the northeast part of the county, and the outcrops across the county line, Fish Pot Run and outcrop and the outcrop on the Bumgarner farm, all showed a good thickness of coal. Then the Rice's Landing coal was exploited; the coal began slightly north of Greensboro, which is up the Monongahela River some fifteen or eighteen miles from Rice's Landing, that showed a nice outcrop for some distance south to the mouth of Dunkard's Creek and up Dunkard's Creek a mile and a half or two miles to Taylortown, where you can drive a horse and wagon in and it will show you nine to nine and a half feet of coal.

MR. DICKINSON: Has he finished his answer?

THE WITNESS: I want to give it all to you without questioning.

MR. DICKINSON: You need not show such anxiety about it. Read the question and see what that was.

(The question was repeated by the stenographer.)

MR. REED: He is telling you his experience across the river in Greene County.

MR. DICKINSON: Wait a moment. We want to put an objection to his experience.

MR. COLTON: We object to his statement of experience across the river in Greene County as irrelevant.

MR. REED: You are limiting this statement to your experience that you had prior to 1901, are you?

THE WITNESS: Yes; 1896 to 1900, the latter part of 1900.

By MR. REED:

Q. That is what I am anxious that you should do. Now tell us the tests you made and the investigations you conducted prior to April 1, 1901, and with that interruption I wish you would go ahead and answer.

A. I think I left off at Taylortown. Going on toward the Monongahela River, along the outcrop of the Pittsburgh coal, which is some 150 feet above the water line, you turn south at the river, at the creek's mouth, and follow directly south up above Lock No. 8 on to Morgantown, a distance of possibly twenty miles of outcrop coal, together with numerous oil and gas wells which are scattered throughout practically all of Greene County, the oil wells in the basins and gas wells on the anticlines; we had a record at that time, and at that time the geological survey were working up certain data in that county. You can see their bench marks on various hilltops and bridges and permanent objects.

Q. You mean the data on coal?

A. It would be the elevation of the coal. The Pittsburgh coal is the basis of all measurements of this data in western Pennsylvania geological surveys, whether it is above it or below surface. All oil well men take their depth of the oil and gas wells from the elevation of the Pittsburgh coal bed when they are drilling all these oil wells and core drills. I have run the levels in practically the whole of Greene County from the tops of the holes.

From the records obtained they show not only the elevation of the Waynesburg coal, which is some 400 feet above the Pittsburgh coal; the Sewickley coal, which is within 100 or 120 feet from the Pittsburgh coal, and the Redstone coal near

the Pittsburgh bed. This shows the persistency of all the measures throughout Greene County.

MR. COLTON: I object to the witness's statements, in so far as the witness's statements are based upon Oil well records, or Government records, upon the ground that the records are the best evidence.

By MR. REED:

Q. Now, Mr. Boileau, how many acres of unmined coking coal are there at present in Greene County?

MR. COLTON: Objected to as irrelevant.

A. Will you allow me to preface my answer again briefly?

By MR. REED:

Q. Yes.

A. Since testifying previously, I have made further explorations during the past year, principally with my field force, almost entirely and continuously at work in the county, and I would judge from the boundaries that I know of personally in the drilling, and various core drills that I have made at great expense during the past year, taking out these sections from top to bottom with the diamond core drills, I would extend the territory to include to a least the Washington anticline on the northwest, to the Monongahela River on the east.

Q. I call your attention to Defendant's Exhibit 88, and ask you to state with reference to the blue pencil line on the western side of the district shown here where this Washington anticiline is that you speak of.

A. That is correct. The Washington anticiline runs northeast and southwest through Washington, Pa., and through a point close to Littleton on the B. & O. in West Virginia.

Q. Then it is substantially shown by the blue pencil line on the western side of this district?

A. It is.

Q. Which I see goes from one of those towns to the other?

A. Yes.

Q. And have you personally made tests of the coal throughout that part of Greene County which lies to the east of that line?

A. I have some forty or fifty core drill records with the measurements and the levels run, thickness of coal and the quality.

Q. Now, on your advice have your clients invested their money in that Greene County coal?

A. Yes, several million dollars in the last few years, even the last year.

MR. COLTON: That is objected to as irrelevant.

By MR. REED:

Q. To the extent of how many acres, roughly, of course?

A. I do not know. I have dealt in some of it twice.

Q. In the last year how many acres have your clients sold?

A. I have only sold one area of 1,350 acres, at $800 an acre.

MR. COLTON: Excepted to as irrelevant.

By MR. REED:

Q. Now, in Washington County have you made similar tests throughout the county?

A. Yes.

Q. Have you had clients who bought or sold coking coal in Washington County?

A. I have made no sales in Washington County lately, but I have worked with Mr. Thompson, who has several thousand acres, and Mr. Semans, who had several thousand acres, and have made their core drilling tests for them.

Q. How many acres of unmined coking coal are there now in Washington County?

MR. COLTON: I object to the witness stating that, as he has not been shown to have any knowledge on the subject, and as irrelevant.

A. Practically 175,000 acres.

By MR. REED:

Q. Do you know what part of the 175,000 acres in Washington County that you speak of is owned or controlled by the H. C. Frick Coke Company?

MR. COLTON: I object on the ground that the records of the H. C. Frick Coke Company are the best evidence of what it owns and controls.

THE WITNESS: From the record given me in the way of a map, there is about 5,700 or 5,800 acres, I do not remember which.

MR. COLTON: Objected to as hearsay and as secondary.

By MR. REED:

Q. And in Greene County how much does the H. C. Frick Coke Company own and control?

MR. COLTON: I object to his stating what the H. C. Frick Coke Company owns in that county on the ground that the records of that company are the best evidence.

THE WITNESS: Including the purchase made from the River Combine and the former purchase made earlier, they own about 5,100 acres.

MR. COLTON: Objected to on the ground that it is hearsay and secondary.

By MR. REED:

Q. About how much coking coal is there unmined now in those four counties?

MR. COLTON: Objected to on the ground that the witness has not been qualified to state as to the amount of coking coal in those four counties, and also as irrelevant as of the present date.

THE WITNESS: From my information and data I should judge practically 600,000 acres.

By MR. REED:

Q. How much of that does the H. C. Frick Coke Company own?

MR. COLTON: Objected to on the ground that the witness has not been shown to know what the H. C. Frick Coke Company owns, and that the record of the company is the best evidence of what the H. C. Frick Coke Company owns.

THE WITNESS: Approximately 70,000 to 72,000 acres.

By MR. REED:

Q. How many acres of coking coal in those four counties are to-day owned by Mr. J. V. Thompson, of Uniontown?

MR. COLTON: Objected to on the ground that it is irrelevant, and the witness has not been shown to know how much he owns, and that the records of J. V. Thompson is the best evidence of what he owns.

THE WITNESS: Allow me to preface my answer by saying that during the past three weeks I have made up a complete statement of all Mr. Thompson's holdings in Pennsylvania and West Virginia.

By MR. REED:

Q. Of coking coal?

A. Of coking coal and his other coal. Of coking coal I judge he and his associates own in eastern Greene County and Washington County approximately 175,000 acres.

MR. COLTON: I object to the witness stating his opinion as a mere opinion of judgment, and in so far as it is based on record, as secondary.

By MR. REED:

Q. Mr. Thompson and his associates are clients of yours, are they not?

A. They have been for thirteen years.

Q. Have you advised them in their coal purchases?

A. Practically all of them, at various times.

Q. Have you had charge of the suvreys and the examinations of the properties?

A. Practically in touch with all of them.

Q. And in that way you have some knowledge of what Mr. Thompson has bought?

A. I have.

Q. Do Mr. Thompson and his associates operate furnaces?

A. They do not.

Q. Are their lands for sale?

A. They are.

Q. They seem to have about two and a half times as much as the United States Steel Corporation. Are those coking lands of good quality?

A. They are.

Q. There is some coal across the West Virigina line, is there not?

A. Yes, sir.

Q. Good coking coal?

A. Yes, sir.

Q. How many acres are there over there that you know about?

A. The area would include that of the Kanawha Syndicate, which is 60,000 acres, that of Mr. Thompson and his associates, probably 60,000 acres more; counting the Fairmount Coal Company and other large operations that have not mined out their coal, probably 200,000 acres.

Q. Does the United States Steel Corporation own any of that?

A. Not of record.

Q. Mr. Boileau, from your experience in that district, buying and selling coking coal lands, and your experience in working for Mr. Thompson and his associates, and your other clients, from the drillings that you have made over those counties, from the explorations that you have made in other ways, what would you say as to the difficulty of equipping a company of the size of the Carnegie Steel Company with a supply of coking coal as extensive as that which the United States Steel Corporation now has in that district.

Mr. Colton: That is excepted to as irrelevant.

The Witness: In the basin between the Great Belle Vernon anticline, and the Fayette anticline, in which the best and thickest gas and coking coal is found, you could get an equal acreage or a greater acreage of just as good quality as that you find across the river, just as good average quality as that across the river.

Q. We had been talking about unmined coal lying in the ground. Has any of that coal been operated west of the River?

A. Only at two points in Green Co., the northwestern end of the county at Rice's Landing, where the coal was not coked, but they wanted to ship it as coal. Its development was a little bit prohibited on account of the coal rates not being equal to other districts. The Poland Coal Company intend making coke to the north side of the mouth of Dunkard Creek

and at the Junction of Dunkard Creek and the Monongahela River.

Q. That is in Greene County?

A. Yes.

Q. How about Washington County? Has any of that been coked?

A. Washington County has, for a distance of probably twelve miles north and south from the mouth of Ten Mile Creek, six coking plants, and I think 1,500 coke ovens. There are some properties in there that will be developed by the extension of the branch south from Van Emmans.

MR. DICKINSON: Did you refer to a branch?

THE WITNESS: Yes; a branch of the Pennsylvania Railroad.

MR. DICKINSON: Oh! a railroad branch.

THE WITNESS: Yes.

By MR. REED:

Q. There were no coking ovens in Washington County, were there, in 1901?

A. In 1901, no.

Q. Was any of the coal of Washington County then being used for coking purposes?

A. No; although some had been purchased.

Q. How about Jones & Laughlin?

A. Oh, I beg your pardon. Jones & Laughlin for years have shipped from the Vesta Coal Company their supply of coal, but it was not coked on the ground. It was coked at Hazelwood.

Q. But the coal was a part of this Washington County deposit of which you speak?

A. Yes.

Q. And it was shipped in the raw state to Pittsburgh and used in the ovens there?

A. They shipped it in barges on the river.

Q. How long have they been using it?

A. Ever since I went into the field.

Q. When was that?

A. 1896 or 1897; I do not know how much longer.

Q. In 1901, then, was there any doubt in any one's mind but that the Washington County coal was useful for coke making?

MR. COLTON: I object, on the ground that the witness cannot know what was in everybody's mind, and that his opinion of what was in everybody's mind is irrelevant and incompetent.

THE WITNESS: Previous to 1901 I had spent four or five years exploiting eastern Greene and Washington County, and sold some coal in the southeastern part of Washington County, adjoining the present operations of the Pittsburgh-Buffalo, who have put in an immense plant to make gas coal and coke. Mr. Jones purchased his coal, I think, in the year 1900.

By MR. REED:

Q. Just wait a minute. The question was whether it was generally known that Washington County and Greene County coal was coking coal.

MR. DICKINSON: One moment. That was not the question. I will ask the stenographer to read the question.

(The question was repeated by the stenographer as follows):

"Q. In 1901, then, was there any doubt in any one's mind but that the Washington County coal was useful for coke making?"

THE WITNESS: My friends and myself——

MR. DICKINSON: One moment. Do you ask that as a new question, Mr. Reed?

MR. REED: I do.

MR. DICKINSON: Because it is not the same question, by any means, that you have last asked.

MR. REED: I understand that it is not literally the same.

MR. DICKINSON: I do not think it is anywhere near it.

(By request, the stenographer repeated the last question as follows:)

"Q. The question was whether it was generally known that Washington County and Greene County coal was coking coal."

MR. COLTON: I object, on the ground that the witness has not been shown to know what was generally known at that time. It is objected to as incompetent and hearsay.

THE WITNESS: The several associates I sold to, and the statements made by various people, showed that they thought it was, or they would not have put their money in it.

By MR. REED:

Q. Throughout the coke district was it believed to be coking coal?

A. Yes. Numerous men from Uniontown, the heart of the coke field, went over there and purchased lands in competition with the purchases that I was trying to make.

Q. Was it generally known that Jones & Laughlin were obtaining their coking coal from Washington County?

A. It was well known.

MR. REED: You may cross examine.

CROSS-EXAMINATION

By MR. COLTON:

Q. You got an option on 100,000 acres in Greene County in what year?

A. In 1897, I think it was.

Q. How much did you pay for that option?

A. Shall I give you a clause out of it, reciting it? That will show it.

Q. I would like to know what you paid for it.

A. The option had a clause in it reading like this:

"The true intent and meaning of this agreement is to give the party of the second part the privilege of purchasing said described coal or coal rights at any time within a year from the date hereof, unless such second party shall pay to the party of the first part, the owner, the sum of one dollar per acre; and, in that case, this option shall be extended for a further period of one year from the date thereof."

Q. What were you to pay for the land under that option in case the option was exercised?

A. You mean how much an acre?

Q. Yes.

A. Twenty dollars an acre was the highest price; fifteen dollars was the lowest.

Q. You sold 33,000 acres in Greene County at some time. At what time was that?

A. I think that was in 1899; from April 21, 1899, up until December 15th, and then, on July 1, 1900; the purchase of that would be included between those dates, about a year and three months.

Q. What did you get per acre for that 33,000 acres?

A. Anywhere from four dollars up to forty dollars an acre.

Q. There was a great difference in the value of those acres, was there not?

A. The four dollar acreage was farther west, where they did not know but little about the coal. I found out about it while I was making a survey through there.

Q. What is the next sale of land that you made in Greene County—sale or purchase?

A. On Jan. 1st, 1900, I sold to J. V. Thompson and six associates 11,949 acres directly west of Waynesburg.

Q. At what did you sell it?

A. $16 an acre net to me.

Q. What is the next sale you made in Greene County?

A. I do not know. There are two or three years that I did not make any,—from 1903 to 1904—or 1901 to 1904, something like that. But the next sale was 6,000 acres, at $200 an acre, and that was north of Waynesburg. I cannot recall the dates. I sold 1,000 acres at $450 an acre, near Jefferson. I sold 2,815 acres at $600 an acre, to the North of Jefferson. There are some other sales in which I was interested, or in which I had equities.

Q. About what date was that?

A. Four or five years ago, anyhow. I cannot give the exact date.

Q. Prior to that time had you sold any so-called coking coal lands in Greene County at over $100 an acre?

A. You mean prior to what date?

Q. Prior to 1904?

A. No, sir; I did not.

Q. What sales have you made since four or five years ago prior to October 26, 1911?

A. I was interested in exploiting other fields for three or four years.

Q. If you have not made any sales in Greene County, we will leave Greene County.

A. Well, I was more interested in other fields.

Q. The last sales you made in Greene County were made five or six years ago, at the figures stated?

A. Oh, no. I sold $1,050,000 worth of coal this last November, and——

Q. No; I mean before October 26th, 1911?

A. I beg your pardon. I was interested with Mr. Thompson in the sale to the Crucible Steel Company of 4,700 acres at $800 an acre.

Q. At what date?

A. Two years ago, practically; about two years ago; and then, a year ago, there were two purchases, aggregating about 4,700 acres.

Q. How much did you sell at the first purchase?

A. About 2,500 acres; and we added to that 2,200 more.

Q. Those 2,500 acres were sold at what price?

A. At the price of $800 an acre; and the 2,200 acres were back of it, and sold at the same price, I believe at a later date.

Q. In Washington County what sales have you made of so-called coking coal?

A. I sold the Manifold property, 5,200 acres, about 1903, I think it was, or 1904.

Q. What did you get for it?

A. Net to me, $151 per acre.

Q. That was the first sale you made in Washington County, was it?

A. No, no.

Q. Give us the first one you made in that county?

A. I sold in 1899 some acreage at Zollarsville to John G. Patterson and F. M. Osborne, formerly president of the Pittsburgh Coal Company——

Q. What did you get per acre?

A. $25 to $40 an acre. It varied.

Q. What date was that?

A. That was April 21, 1899. That is the first block of inland coal ever sold in Greene County or that part of Washington Co.

Q. What was the next sale you made?

A. In Washington County?

Q. Yes.

A. The Manifold property. I do not know the date of that. It was in 1904, I think.

MR. DICKINSON: Did you use the expression inland coal?

THE WITNESS: Yes. It was the first block of inland coal that I ever sold in Greene County or Washington County; that is the first block that was not on the river front; the first that did not have any railroad or river to take it away. None of this coal had any railroad or river facilities. The railroads have not developed Greene County for the last ten or twelve years; but they need it now, and they are going into it.

By MR. COLTON:

Q. When did the railroads begin to go into Greene County?

A. I think they projected their line south to Rice's Landing, that is, to the Dilworth property; and they commenced to ship coal by rail something like four or five years ago.

Q. That is near the Connellsville District, is it not?

A. Across the river.

Q. Just across the river?

A. Yes. But you will note that the reason that the Dilworth property was not regarded as highly as others was that it was near the erosion or outcropping, where there is higher sulphur to be found, and it is hard to get coke from that. Otherwise it could readily have been made into a good coking proposition.

Q. That was five or six years ago when the first projection of railroads was made into Greene County?

A. Yes; before that they shipped by river.

Q. How much of the territory was accessible to the river?

A. 25 miles front.

Q. 25 miles front on the river?

A. Yes; along Greene County?

Q. How far back from the river?

A. If you sink a shaft at the river edge, and build your tipple there, you could dump the coal into barges and transport it down river. You could go four or five miles underground nicely back from the river although a longer haul would be a little expensive.

Q. How far back from the river did this coal land run?

A. You mean, that I sold?

Q. No; I mean the coal land in Greene County; how many miles back from the river did it run?

A. It goes back 25 to 30 miles.

Q. Then the only portion of it that could be operated during that period was four or five miles?

A. No one would take up river development—the river business was bad. Nobody wanted to get into it.

Q. What was the trouble with the river business?

A. The companies were back on their dividends. It was hard to operate with the old barges, and tows, and the upkeep would not permit them to make any money.

Q. They could not economically produce it there?

A. No; unless it is a modern development, with steel barges, and so on.

Q. How about the season? During what season can you work on the river there?

A. It is irregular. Sometimes it is interfered with on account of the ice, and sometimes on account of dry weather.

Q. How much of the season can you ship?

A. About ninety days. We are sure of ninety days, I think, out of the year.

Q. Then from an economical point of view, prior to 1905 that coal was not available under then existing conditions, was it?

A. Allow me to answer that indirectly by saying that the coal was just as good and was there; the thing was to get to it.

Q. Under the then existing conditions it could not be sent to the market economically?

A. It could not.

Q. Now, how far did the railroads penetrate into Greene County prior to October 26, 1911?

A. It went three miles to Rice's Landing practically into Greene County, a narrow gauge run a distance of twelve miles south to Waynesburg in Greene County, into the heart of Greene County.

Q. When did the narrow gauge run that twelve miles?

A. I think it was built in 1873 or something like that.

Q. What was the trouble? The narrow gauge was not connected up with the broad gauge?

A. It was not connected up with the broad gauge, and the transfer of the coal would be an impossibility.

Q. It would be too expensive to transfer it to the narrow gauge?

A. Yes.

Q. Is the narrow gauge of any value now from the point of view of transportation of coal?

A. No.

Q. Take up Washington County.

A. Railroad development?

Q. Yes.

A. You just want that part of it that is coking coal, don't you, the part within the blue lines?

Q. I want the part that is coking coal.

A. The Baltimore & Ohio goes through the northeastern corner of Washington County westward through the town of Washington and on to Wheeling, touching the northern portion of the territory marked in the blue line.

Q. That railroad just barely touches the so-called coal territory in Washington County?

A. It does. This map is incorrect inasmuch as it does not show the line running from Monongahela City any further than to the Bentleyville and Ellsworth mines and to Cokeburg. It should go down Big Daniels Creek to a point called Zollarsville or Marianna.

Q. What is that railroad line of which you speak?

A. It is the extension of the Monongahela Branch of the P. V. & C., owned by the Pennsylvania Railroad Company. That line was built from Bentleyville to Zollarsville to take care of a large tonnage of coal and coke being produced at the Marianna mines of the Pittsburgh-Buffalo Company.

Q. At what time?

A. That was projected about four years ago.

Q. When was it built?

A. Built four years ago at an expense of a million dollars.

Q. What other transportation line is within Washington County?

A. From north of Monongahela City the same P. V. C. Division extends south along the Monongahela River taking tonnage from several mines of the River Combine and independents.

Q. Just a moment, before you go on farther down. That just skirts Washington County?

A. The eastern edge, yes.

Q. Just skirts the eastern edge of Washington County?

A. Yes; that line is built along the entire front of some twenty miles of Washington County, leaving the county line at Millsboro going south along the edge of Greene, following the river the entire distance.

Q. Is that all the transportation that Washington County has?

MR. REED: That part of it, you mean?

By MR. COLTON:

Q. That part you included within the district of so-called coking coal.

A. Finished, yes; there are others projected. I mean within the space covered by the blue lines.

Q. What is the name of this railroad you have just described here?

A. Along the east side of Washington County?

Q. Yes.

A. And fronting the Monongahela River, the Pittsburgh,

Virginia & Charleston Division of the Pennsylvania Railroad.

Q. How does that get to Pittsburgh?

A. Directly down the river to the Pennsylvania Lines.

Q. Do you know where the Union people were developing their coke and coal properties at the time they were absorbed by the United States Steel Corporation?

A. I cannot recall the acreage that they were developing.

Q. No, I did not ask for the acreage; I mean where they were developing.

A. Undoubtedly in Fayette County lower basin; I do not know where.

Q. Well, do you know what railroad rights they had at that time?

A. No, I do not know anything about the terms. You mean the Clairton?

Q. No, I mean the Union Steel or the Sharon Steel. Do you know what railroad rights the Clairton sold it?

A. No, I know where their coal was; that is all.

Q. Where was their coal?

A. South of Brownsville, along the Monongahela River.

(Whereupon a recess was taken until 2:00 p. m.

AFTER RECESS.

JOHN W. BOILEAU,

the witness under examination at the taking of recess, resumed the stand.

CROSS EXAMINATION (Continued),

By Mr. Colton:

Q. Mr. Boileau, the greatest portion of Greene County, or the coal located there, has not been available on account of existing transportation conditions up to the present time; is not that true?

A. So far as railroads are concerned, with one exception.

Q. How much of an exception is that exception?

A. The northeastern corner of Greene County, touched by the P. V. & C. Line.

Q. Just touched?

A. Just about three miles on the border.

Q. And how far is it practical, from an economic point of view, to bring the coking coal to that railroad?

A. If you have to haul that coal underground, I judge four or five miles; after you get over that it is considered a pretty long haul.

Q. Four or five miles is the outside limit. Now, you spoke of some of that coal extending down into West Virginia. What are the transportation conditions down there?

A. They have been better there, because near the Baltimore & Ohio Railroad—the B. & O. bounds that entire body on both sides.

Q. Let us see where the coal is located.

A. Here is the coal (indicating on map), immediately south of this, in this basin.

Q. And the railroads do not go through it, but touch it on either side; is that it?

A. Yes, they go through it. Allow me to explain it. The Baltimore & Ohio Railroad comes south from Point Marion, through Morgantown, through Fairmount and Clarksburg. That is called the Fairmount Division. From Fairmount, directly across, the basin runs to Wheeling—the Baltimore & Ohio Railroad.

Q. How much development of mines has there been there?

A. For years that is where the Baltimore & Ohio Railroad have secured their main source of revenue, in the Fairmount district, in coke and coal. It has been coked——

Q. (Interposing) For how many years?

A. To my knowledge the coal mines and the coke ovens have been there since 1889, when I sold a large acreage of coal land in that district.

Q. And where was that coke taken to?

A. That coke was hauled east, to eastern markets, by way of Cumberland, from the Fairmount district; and some of it was hauled right through the Connellsville District, on

through to the markets; and a little of it came to Pittsburgh, but very little.

Q. Very little of it came to the Pittsburgh market?

A. Very little. I will show that. Some of it would go over into Ohio, but very little. It was mostly eastern coke.

Q. And large portions of it had to be prepared for use?

A. No; there were no washeries in that section.

Q. Where are the washeries?

A. The washeries are right here, in southern Fayette County and the southern part of the Klondike district; there are several washeries there.

Q. How about Greene County?

A. There is no washery there.

Q. There is no development there, but do you know whether it needs to be washed?

A. Greene County coal, like a good bit of lower Connellsville, is such that either picking tables will have to be put in and the slate picked, or it will have to be washed, depending upon the amount of sulphur and ash in it, and how easily it comes out, and how it is found in the partings, whether it is in the roof or bottom.

Q. There are also large portions of territory in Washington County of so-called coking coal that has not been available on account of transportation conditions. Is not that true?

A. Particularly that west of Little Chartiers Creek which would be about one-third of Washington County, is not available for a railroad yet, although there is a railroad to Zollarsville, within three or four miles, and also to Cokeburg, three or four miles from there. I would say one-fourth of the area within the blue lines is practically so you could not reach it by present lines.

Q. I have forgotten for the moment how long ago this railroad was built. How long ago was it?

A. About four or five years ago.

Q. That has been built four or five years——

MR. DICKINSON: Get the name of the railroad.

THE WITNESS: The Marianna Extension.

By Mr. Colton:

Q. That is the Marianna Extension?

A. Yes.

Q. That would take out a still larger portion of the coking coal than before that time?

A. Yes; that would increase a large acreage in here (indicating).

Q. There would be a very large acreage added to what is now not available on account of market conditions prior to the time that that road was built?

A. I would say that that addition would embrace about one-sixth of the blue area, I mean the area within the blue line.

Q. Within that county?

A. Within that county—with the boundary line of the county and the river as the boundaries.

Q. What is that railroad?

A. The dotted line to the west of the narrow gauge railroad is the projected line of the Pennsylvania Railroad, in striking out the narrow gauge and making it standard gauge to Waynesburg.

Q. That has not been built yet?

A. It has been projected for several years.

Q. And it is still projected—but has not been built?

A. That is correct. It is the loop that can be made to take out the tonnage.

Q. What is this road?

A. A narrow gauge. It is the Waynesburg and Washington Narrow Gauge, from Washington to Waynesburg, twenty-eight miles.

Q. Does that railroad transport economically?

A. No, it does not, neither passengers nor freight.

Mr. Reed: There has been some agitation on that subject, has there not?

The Witness: Yes, sir.

By Mr. Colton:

Q. Please tell us the name of this road (indicating).

A. The Pigeon Creek Branch of the P. V. & C.——

Q. From the Pigeon Creek Branch of the P. V. & C. all the way over west until you get to the end of the line, what transportation companies do you find?

A. There is nothing there except what you could reach from running a branch from the Baltimore & Ohio south to the northern portion of this (indicating), along Little Chartiers Creek, which projected line is being corrected at the present time to build into Zollarsville, practically parallel with the Pigeon Creek and Bentleyville-Marianna line.

Q. You have some more projected lines, but there was no line of transportation except whatever distance you can conveniently reach the Baltimore & Ohio Railroad?

A. Yes.

Q. And that skirts the northern part of the county?

A. Not the county; I should say the blue line territory.

Q. Now, come over into the old Connellsville District. What different railroads do you find there?

A. We find the Pittsburgh & Lake Erie Road.

Q. What company owns that?

A. The New York Central System. It runs from Pittsburgh via McKeesport up the Youghiogheny River, and then up the Youghiogheny River to a point near Broad Ford and New Haven opposite Connellsville. At Jacobs Creek a branch extends up into Perry Township, in northern Fayette County, developing the eastern portion of that territory, and also a branch of the same line south of McKeesport comes up the east bank of the Monongahela River to Brownsville. This territory between the Monongahela River and Youghiogheny River is practically controlled by the New York Central System.

Q. Now, this Old Connellsville region, you have already described what that is?

A. Yes.

Q. That is practically intersected with railroads built as distinguished from railroads projected, is it not?

A. Yes, the New York Central System, the B. & O., and the Pennsylvania, the latter having the best development and the larger tonnage.

Q. And you find railroads there every few miles in that old Connellsville region, do you not?

A. Yes.

Q. Do you know how long those railroads have been there?

A. All of them have been there over ten or fifteen years or twenty years.

Q. Now, suppose we go down into the lower Connellsville district. What railroads have we in the lower Connellsville district, beginning at the south?

A. The B. & O. runs from Connellsville along the eastern outcrop of the old Connellsville basin to Point Marion on the Monongahela River. It has a branch down to Leckrone.

Q. Do you know when that branch was built?

A. That was a long time ago. I think it was along about 1899.

Q. Do you know whether that is where the Steel Corporation property is located, in the Lower Connellsville?

A. They have a plant at Leckrone, and at Edenborn; their plant is at Leckrone, but that was built by an independent steel corporation, I think the Illinois Steel. I do not know.

Q. It is the Illinois Steel Company's property, as I understand it.

MR. DICKINSON: You mean a property of the Illinois Steel Company?

MR. COLTON: Yes.

THE WITNESS: This entire territory in the east is developed by both the B. & O. and the Pennsylvania.

By MR. COLTON:

Q. That is, the southern portion of it?

A. The southern portion of the old region, the New York Central and the Pennsylvania developed along the east bank of the Monongahela River the entire length from Brownsville to New Geneva. From New Geneva south the line is built jointly by the Pennsylvania, the New York Central and the B. & O.

Q. That skirts the outer edge of the territory?

A. Of the lower basin on the Fayette County side.

Q. What branches are there penetrating into the territory?

A. There are several branches, the Connellsville Central,

built up Dunlap Creek from Brownsville. I do not know the ownership of that.

Q. You do not know whether that is the road that Union Steel Company had pre-empted to build or partly build or had gotten started, from the Hillman people, they had a special charter to build, and partly pre-empted the land on which the building was to take place?

MR. REED: You do not mean pre-empted. You cannot get a special charter in Pennsylvania, and have not been able to since 1873. You do not mean that.

MR. COLTON: I mean, as a matter of fact, they had a charter, that gave them a right. I am not as familiar with the Pennsylvania laws as you are.

THE WITNESS: I cannot say anything definite as to that.

By MR. COLTON:

Q. Do you know when that branch was built?

A. No, I do not. I sold some farms in there, and I do not know when it was; I could not come within two or three years of it.

Q. Do you know whether it was built subsequent to 1901?

A. It has been built since 1901, I am sure.

Q. Take the central portion and describe the railroad facilities in that.

A. The P. & L. E. have a branch up from there, just above Belle Vernon to Arnold Nos. 1 and 2, and the Washington Run branch, and the Washington Coal & Coke Company in Perry township have developed that territory.

Q. Do you know when those branches were built?

A. The Arnold has been opened since the Pittsburgh Coal Company was formed, I think; I know the superintendent who built that branch. I think that was before the Pittsburgh Coal Company was formed in 1900.

Q. What is the name of that branch?

A. The Washington Run branch; it has been in there for several years.

Q. Now, in the northern portion, by what railroad is the northern portion served?

A. You mean the Rostraver township in Westmoreland

County, between the Youghiogheny River and the Monongahela River, the one township included in the blue line plot that is controlled entirely by the New York Central System and the Youghiogheny branch of the Monongahela River branch.

Q. And there are no branches in that region?

A. There might be a little siding in there; that is about all.

Q. Now, the Connellsville region as compared with the lower Connellsville or the Klondike region is full of branches as well as general railroad systems, is it not?

A. Well, it is not much different; that is, it had smaller operations than in the lower region, but larger in number.

Q. And the distance of other than railroad transportation is consequently less in the old Connellsville region than it is in the new?

A. The distance of other transportation?

Q. Than railroad; it is less in the territory of the old Connellsville than it is in here? I mean, you can reach from Connellsville a railroad or a branch of railroad by a less haul than you have to make in the new Connellsville district?

MR. REED: You mean the railroads are closer to the coal in one place than in the other?

MR. COLTON: Yes. Is that correct?

THE WITNESS: Yes. You mean the underground haul to get to your siding or coking plant is less in the upper part of the old region than it is in the lower Connellsville region?

By MR. COLTON:

Q. Yes.

A. Yes. We are able to haul it further now than we were then.

Q. You had a suit against certain railroads in order to get lower transportation rates?

A. Yes.

Q. What were those railroads you spoke of in your direct examination?

A. The New York Central Railroad and Pennsylvania Railroad, the Pennsylvania Company and the B. & O., only on lake coal, lake cargo coal from the Pittsburgh district to Lake Erie.

Q. Do you know anything about a railroad of the United States Steel Corporation extending from Mount Pleasant to the Southwestern Pennsylvania Railroad, or rather to S. W., that probably is not the Southwestern, the S. W. Pa. R. R.?

A. They may have built their own little line to get their coal to the railroad, but I don't know anything about it.

Q. You do not know anything about the transportation facilities that the United States Steel Corporation has in the Lower Connellsville district or in the old Connellsville district, do you?

A. I do not know the conditions about that Southwestern Pa. Railroad down to Jack's Run in the old Connellsville region. I might have an outline of it, but I do not know, only from printed matter I have read, and I do not recall that, of the conditions surrounding what they have there. I would like to explain just a moment on that. Everything I had anything to do with in the coal regions, if sidings were wanted we usually built our own branches and then turned them over to the railroad company.

Q. Mr. Boileau, the coal of the old Connellsville basin, owing to the conditions under which it was laid down and the after influences which affected the coal, is softer and better coking coal than the rest of the coal in the region that you have been discussing?

A. It is more ideal so far as softness is concerned, where the quality reaches a high grade and good thickness.

Q. And certain portions of the coal outside of the old Connellsville district have to be washed; certain portions of the coking coal outside of the Connellsville District have to be washed?

A. It has to be washed or prepared; that is, pick the slate out of it or wash it, just the same. The slates are picked out. They use a picking table in the southern part of Fayette County; where there is a high content of sulphur and ash. They have washeries, also.

Q. The Old Connellsville basin is nearest the zone of eruption of the mountain range, and that naturally has an influence through physical disturbance to make it a better quality; is that the fact?

A. I would say that influenced it, yes, to make it of a different physical structure or condition, and the quality was there because it was in the basin.

Q. The vegetable bed there was undoubtedly thicker than in other regions, leaving a thick bed of coal of a soft physical nature, with such a condition that when mined and thrown into the oven, it makes it ideal for producing Connellsville coke; is that correct?

A. That is correct. I can supplement it by stating three different theories on which that little basin through there was laid down, but I do not want to do it because all western Pennsylvania was not laid down in the same condition. Some may have been transported, some drift, and some settled because of specific gravity.

Q. Does that make irregularities, the difference in the way in which it is laid down?

A. It makes conditions, for instance, if the vegetable bed was deposited right on the ground here, and the water covered it over, and a solid deposit of silt formed, that made a perfect bed of coal; if the drift was washed in and transported, and the drift washed in with the sand and the soil and the vegetable matter, the sand and the soil would sink before the vegetable matter would, and form a bed for the vegetable matter, and then it would be covered, but not liable to be in quite so good condition as the first. But if it was washed off from the mountain top into the basin and put down naturally without much disturbance through a great eruption and disturbance of the existing conditions of the earth's crust, and dropped down in a vegetable bed, or formed before it was thus thrown up, it would make another condition.

Q. And those varied conditions existed?

A. They have in various locations of the coal fields of the United States, but in this case I do not care how it was laid down, it was laid down ideally, I mean the old Connellsville bed.

Q. The old Connellsville bed was ideal?

A. Yes; undoubtedly the zone eruption had something to do with affecting the quality.

Q. But these conditions that you have described did make varying conditions as to the character and thickness of the coking coal in Pennsylvania?

A. Yes, Greene County, for instance, and Washington County, though the basins would not be affected by any eruptions as shown by the uniform mold of the syncline and anticline. And any breaking up which separates the old Connellsville from the Lower Connellsville, the waves as you go further west from this eruption would be lighter, the further away you get from it, and that is what would make the coal not quite as soft as the other.

Q. Nor quite as ideal?

A. Not quite as ideal. If the deposit was laid down I will say to you frankly Greene County coal is laid down in this basin just as ideally, if not as thick, it is laid down as ideally physically as some of the other, but so far as the bed is concerned, physically old Connellsville coal is softer, and it is a little thicker, and you can use it ideally for coke. It is ideal, most of it.

Q. The Old Connellsville coal has a thickness of from nine to twelve feet?

MR. REED: If you are going to make those statements you must give the witness time to challenge them.

Q. Has it not?

A. It has a thickness like that. It goes as low in some places as six feet, and it goes as high up near Uniontown, up to twelve feet of coal; the Lower Connellsville basin does the same thing in thickness.

Q. This thickness as I understood on July 26th, 1911, varied from nine to twelve feet as a general rule, didn't it, in the Lower Connellsville region?

A. They spoke about ideal coal in the old region as being from nine to twelve feet. There are nice mines there. I can show it to you thicker than that in Fayette County.

Q. What about the other region?

A. You mean the lower region?

Q. Yes.

A. Seven, eight, nine; and it can be seen twelve feet thick, down to Brier Hill.

Q. As a general rule, according to your opinion on July 26, 1911, as compared with coking coal in the old region it ran from seven and a half to nine and a half feet in the Lower Connellsville District, didn't it?

A. I will say yes, it did, but I am getting samples from Brier Hill out of the basin where it will show twelve feet of coal; I am getting special samples out of that mine.

Q. The H. C. Frick Coke Company and the other coke companies that took up coke in the Pennsylvania district that we have had under discussion got the cream of the coking coal, did they not?

A. All that bought coal in the southwestern part of Pennsylvania got the cream of it.

Q. Those that bought first bought chiefly in the old Connellsville district, did they not.

A. Yes, and I can name a few hundred acres that they wish they had not bought in the old Connellsville region.

Q. Greene County is still known as the new region, isn't it?

A. In all my work and papers I have called it an extension of the lower Connellsville field. The river cannot be a dividing line. The strata goes underneath it just the same on one side as the other.

Q. I asked you whether it was called the new region or not.

A. Lower Connellsville, yes.

Q. Is it called the new region; is Greene County called the new region?

MR. REED: By whom?

By MR. COLTON:

Q. I mean generally so-called in the trade?

A. I never heard of it; if that is the way I have marked it it is wrong.

Q. Do you recall having made an answer as follows before the Stanley Committee on July 26, 1911:

"Of the coking coal in Greene County, the Emerald Coke

Co., of which Julian Kennedy is president, has 11,000 acres; Wm. G. Mather, of Cleveland Cliffs Iron Co., and Samuel Mather, of Pickands, Mather Co., have 2,800 acres; the Youngstown Sheet & Tube Co. and Andrews & Hitchcock Iron Co. have possibly 1,000 acres each; the Crucible Steel Co. has 2,100 acres, lately purchased in this new region (indicating), what is properly regarded as coking coal."

That is on page 787 of Volume 12 of the testimony before the Stanley Committee.

A. That would be called the new region. I just called it by adjective a new region, and indicated that it was a new region as compared with the old region.

Q. That is new from the point of view of development?

A. Yes; and its purchase.

Q. From the point of view of purchase and development new?

A. Yes.

Q. In the region that we have been discussing they have thick coal in one place and thin coal in another place, do they not?

A. It varies in thickness owing to the conditions under which it was laid down and the after influences.

Q. Do you recall having been asked this question and having made this answer:

"Mr. Young: How about the West Virginia region?

"Mr. Boileau: This basin, what is known as the old Irwin-Webster-West-Newton gas coal basin, goes farther south and extends into West Virginia. There are many operations being started there, but very few now producing coke. This coal will coke, but it will have to be prepared. It is farther away from market and in some cases thicker coal; but it has to be washed."

A. I meant washed or prepared. That is true, I answered it that way, and at the present time two new operations were going in there and using picking tables instead of washing it.

Q. (Reading):

"When laid down it seems as if the vegetable beds were disturbed many times, raising it up and down below the water

level in some cases, and in others very irregular, so that it was impregnated with impurities. It is very seldom that you can get the coal laid down as regularly as in the Connellsville region proper."

That is correct?

A. Yes; between the Wolf Summit anticline on the east and the great Belle Vernon on the west and in the extension right down through West Virginia into the Fairmont-Farmington district it is laid down more regularly, but outside of that you will find impurities which causes the bed not to be considered as high grade coal at all.

RE-DIRECT EXAMINATION

By Mr. Reed:

Q. What is the distance in miles from a broad gauge railroad to the most remote bit of coking coal in Washington and Greene Counties?

A. Will you say Washington first and then Greene?

Q. All right; Washington first and then Greene.

A. If you please, the scale is what? Is it four miles to the inch? (After examination of map:) One inch south of Washington is a point near Van Kirk, on the narrow gauge. That is four miles.

Q. One inch south of Washington does not mean anything.

A. One inch south of Washington on Exhibit 88. One inch from Ellsworth is at the point of Little Daniels Run, in West Bethlehem Township, Washington County. One inch west of Zollarsville is a point slightly east of Ten Mile Village.

Q. I will have to ask you the question again. Mr. Boileau, what I want to find out is how far in miles it would be necessary to build a railroad to connect one of the broad gauge railroads now in existence with the most remote bit of coking coal in the district that you have had under consideration, in Washington County.

A. I would say that a line of five miles from either the Baltimore & Ohio Railroad, the Pigeon Creek branch, the Marianna branch, the P. V. & C., would tap all but a small area in the southwestern portion of the blue line plot north of the Greene County line.

Q. How much farther would it be necessary to extend a railroad in order to get that small bit that you have just excepted?

A. Eight miles—not that much farther, either, but four miles farther. Eight miles would be the farthest edge of coal.

Q. Now, take Greene County. In order to reach the coal which at present is most remote, how far would you have to build your railroad from the nearest present broad gauge line?

A. There are some physical conditions that enter into that, making it a little longer, in southwestern Greene County.

Q. Well, take the extremest case. I want the most unfavorably situated.

A. Will you allow me to make a little statement of the distance? The P. V. & C. is built to Besco, two miles west of Millsboro, on Ten Mile Creek, near Clarksville. From Millsboro to Waynesburg, along the waters of South Ten Mile Creek, it is 18.4 miles. Two miles of that is practically built. That would leave 16.4 miles. With that line built, the entire northeastern corner of Greene County, approximating 80,000 acres, could be developed; but in southwestern Greene County, where the hills are high and the lines steep, the only way you could reach that would be expensive lines from the Baltimore & Ohio Railroad into coal that is deep. I would leave off that corner of the county as being particularly available for development at the present time——

Q. You mean the opposite; you mean leave it off as being unavailable, do you not?

A. Yes.

Q. Did you include that corner of the county in your estimate of 275,000 acres?

A. That western and southwestern piece is what I cut off. We cut 275,000 acres off of 341,000. That would leave 66,000 acres. But in southwestern Greene County——

Q. Southeastern Greene County, you mean, do you not?

A. Southeastern, yes; from the waters of Dunkard Creek, an eight mile line on Dunkard Creek would develop a territory four miles farther up Dunkard Creek east of Roberts

Run. A line up Big Whiteley Creek, which parallels Dunkard Creek, running into the Monongahela River, of eight miles, would also develop that east of a central north and south line through the county. Particularly is Muddy Creek available with another line east of five or six miles, the same as Ten Mile Creek, and the entire half of eastern Greene County is traversed by five gravity lines, along which lines could be built nicely.

Q. You mean the entire eastern half?

A. The entire eastern half.

Q. Now, taking the coking coal of Greene County first, and then Washington County, tell us how they range in thickness; I mean the coal you have included in your estimate, how does that coal range in thickness?

A. The only way I can tell is to specify near some little town—where I drilled.

Q. (Interposing) That is not the way. You know where the thickest is and where the thinnest is, and you can tell us in one sentence.

MR. COLTON: He has said the only way he can tell is to do it in a certain way, and I think he ought to be allowed to do it in the only way he says he can do it.

MR. REED: If you think so, you had better make an objection. I do not want it that way. You can object.

MR. DICKINSON: I object on the ground that the direction to the witness is to do it in a way different from the way he indicates he can do it, and as leading.

THE WITNESS: Greene County coal averages in the northern half between six and seven feet in thickness. That is north of South Ten Mile Creek. The eastern half of Greene County east of Waynesburg, with a line directly south between Blacksville on Exhibit 88, will average from seven and a half to eight and a half feet in thickness, some of the coal running as high as nine feet ten inches in thickness in this southeastern quarter. That portion of Greene County included in the line on the print in the northern half, north of Rutan, to Rogersville, in Greene County, has shown thicknesses varying from seven to eight feet of good coal.

Q. Now, take Washington County.

A. Washington County, it runs from six and a half to seven feet in thickness owing to the location. May I qualify a little in saying that what the vein shows geologically is not the thickness mineable. I am talking about mineable thickness.

MR. REED: You may cross examine.

RECROSS EXAMINATION

By MR. COLTON:

Q. I notice that you used a ruler in giving answers as to distances.

A. Yes.

Q. Have you got any scale of miles on this map?

A. Four miles to an inch.

Q. Does that show on the map?

A. It doesn't show, but that is what it is. I can tell about the distance. I know these distances.

Q. I notice also that you in answering questions gave straight distances, the way a crow would fly?

A. Allow me to say the distance between Waynesburg and Millsboro by a straight line is twelve miles. I gave it 18.4.

Q. You allowed then?

A. I allowed, I remember that; I never got paid for my survey, that is the reason.

Q. You have been attempting to get railroads in that region for the last ten years or longer?

A. Yes; about fifteen years.

Q. Without success?

A. Well, they offer, if I can raise the money to do it—for some branches they need $800,000, and in some $500,000 or $600,000.

Q. They do not think as much of the coking coal down there, for whatever reason, they have not thought it wise to develop that territory, although the coking coal up in this territory is selling at a very high price per acre?

A. To be frank with you, people have not been able to get on the ground and observe the conditions; some of them who in the business world should know of this do not know where Greene County is.

Q. It is not generally accepted among investors as a good coking coal?

A. It has been by a lot of my friends, Mr. Thompson, Mr. Osborn, Mr. Patterson, Mr. Jones, Julian Kennedy, and Mr. Lynch knows it now.

Q. But you have not succeeded in getting any railroad people or financial people up to the present time to undertake building these railroads?

A. No, because they think in one way—the railroad interests—they do not want to make an over development of coal and coke, and in common coal there is an over-development.

Q. And since they feel that way about it that territory is unavailable?

A. Yes, sir.

Q. Are you interested in coking coal in Greene and Washington Counties?

A. Yes.

Q. Financially interested?

A. Yes.

ARTHUR L. DAVIS,

a witness produced on behalf of the defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Severance:

Q. What is your business?

A. At the present time general or division contracting manager of the eastern division of the American Bridge Company.

Q. What is your age?

A. Forty-seven.

Q. Previous to occupying your present position, what position, if any, did you have in the American Bridge Company organization, or what positions did you hold?

A. At the time the Bridge Company was formed, in 1900, I came to New York as assistant to Mr. McCord, who at that time was vice-president in charge of the structural contracting, and in May, 1901, or thereabouts, there was a reorganization, and several vice-presidents in charge of the different characters of work were dispensed with and all the contracting was consolidated. At that time I became assistant to the president.

Q. Who was the president?

A. Mr. Hatfield.

Q. Previous to that time who had been the president?

A. Mr. Roberts.

Q. Was not Mr. Major the president at one time?

A. Mr. Major became the president of the American Bridge Company at the same time Mr. Hatfield became president of the New York Company.

Q. Now, will you explain briefly the distinction between the American Bridge Company and what you call the New York Company?

A. The American Bridge Company of New Jersey is a corporation which fabricates, has charge of the plants, the operations of the plants, and fabricating the work. The American Bridge Company of New York is a commercial organization and has charge of the sales and the erection of the work.

Q. And has that distinction between the two corporations continued from 1901 down to the present time?

A. It has.

Q. What education did you have, Mr. Davis, as an engineer?

A. I graduated in 1889 from the Massachusetts Institute of Technology. I took a special course the following year at the same institution. I then became connected with the Vermont Construction Company at St. Albans.

Q. What kind of work was the Vermont Construction Company engaged in?

A. The manufacture and erection of bridges, primarily railroad work?

Q. What was your position with the Vermont Construction Company?

A. I started in as draughtsman and became their engineer. I then left them for about two years and became bridge engineer for the Central Vermont Railroad.

Q. How long did you continue in that office?

A. Two years. I then returned to the Vermont Construction Company as its manager, and continued with them until 1898, when I became associated with the Berlin Iron Bridge Company.

Q. Where was the Berlin Iron Bridge Company located?

A. East Berlin, Connecticut.

Q. What was your position with that company?

A. I was assistant manager in charge of contracting.

Q. And how long did you continue with that company?

A. Until it was absorbed by the American Bridge Company.

Q. What year was that?

A. 1900.

Q. Mr. Davis, while you were in the employ of the Vermont Construction Company you say they were engaged chiefly in railroad work.

A. That was its principal business, bridges.

Q. You mean railroad bridges?

A. Railroad bridge work.

Q. And what other business than railroad bridges, if any, did the Vermont Construction Company undertake?

A. It built highway bridge work and a very small amount of structural work, building work.

Q. In what part of the country was their business?

A. In New England, northern and eastern New York, and some Canadian work.

Q. What railroad companies did the Vermont Construction Company build bridges for?

A. It built bridges for the Central Vermont, the Rutland,

the Ogdensburg & Lake Champlain, the Boston & Albany, and some subsidiary companies of those roads named.

Q. You said they did some structural work; of what character?

A. As I recall, all the structural work that they did was for one or more of the railroad companies named. It did some for the Boston & Maine, a railroad I did not mention before.

Q. When you were with that company which part of the work did you deal with, the construction work or the commercial part of the work, or both?

A. I had entire charge of every department, from the selling of the work until its final completion in the field.

Q. Did that or did that not involve estimating the prices to be charged for contracts that you undertook?

A. It did.

Q. Did you personally do that part of the work, or did you have subordinates to do it for you?

A. Both.

Q. Then you went with the Berlin Iron Bridge Company as assistant general manager, as I understood your position?

A. They called it assistant manager.

Q. What were your duties?

A. In general I was in charge of sales.

Q. Did you have anything to do with the estimating of prices to be charged, or did you merely secure the business?

A. I made all the costs, practically all of them.

Q. You mean you made estimates of costs?

A. I put the costs on. The engineering department prepared the estimates of quantities and I attached the costs and in a general way indicated the selling price.

Q. Where did the Berlin Iron Bridge Company do business? That is, where did it erect work?

A. Their field was limited in one sense and general in another. It was limited to New England and New York on strictly competitive work. It went much farther west and abroad in work that depended largely on the design.

Q. Well, by design, do you mean that they submitted designs in competition with other designs?

A. Yes.

Q. So that that was competitive in another way, then?

A. In another way.

Q. And in what sense did you use the words "competitive work," as to the first class, where you said that they were confined to a certain district?

A. Where the plans were submitted with the inquiry, and there was no opportunity of changing that design in any way, in that case the matter of freight would largely govern its ability to obtain work.

Q. Now, when you came to the American Bridge Company, as I understood you, you were first assistant to the president?

A. To the vice-president.

Q. And who was the vice-president to whom you were assistant?

A. Mr. William H. McCord.

Q. How long did you continue in that position?

A. About a year.

Q. And then you became assistant to the president?

A. I became assistant to the president.

MR. DICKINSON: Are both these companies New York Companies that you are here speaking of? The last was the New York Company.

THE WITNESS: There was no New York Company prior to May, 1901.

MR. DICKINSON: When you said assistant to the vice-president that meant American Bridge Company of New Jersay, and when you spoke of assistant to the president, you meant assistant to the president of the New York Company?

MR. SEVERANCE: The American Bridge Company of New York. That is the one that now does the construction and erection; I do not mean construction in the sense of fabricating the material;—the erection and commercial end.

Q. Now, during that year or a little over that, you were the assistant to the vice-president of the American Bridge Company of New Jersey; what were your duties?

A. It would be very hard to define them. The company was new and we tried to fill gaps wherever they existed in connection with contracting. I might advise with contracting men; I might assist in the preparation of his contract papers; I would handle the contract papers when they came in after the work had been secured and prepare them for the operating department; in fact, make myself generally useful.

Q. Now, Mr. Davis, during that year previous to the organization of the American Bridge Company of New York were the two departments separate; that is, did you have a certain organization in charge of the mills, construction and fabricating, and another in connection with the selling and erection during that first year?

A. The first year?

Q. Yes, before the organization of the American Bridge Company of New York.

A. We had a vice-president in charge of the engineering, a vice-president in charge of the operating, of the carrying on of the plants; we had three vice-presidents in charge of railway, highway and structural contracting, respectively. I do not recall any other vice-presidents.

Q. Which one of those vice-presidents were you assistant to?

A. Mr. McCord.

Q. Which position did he fill?

A. He was vice-president in charge of structural contracting.

Q. Begin with the organization of the American Bridge Company of New York, when you became assistant to the president, as I understood you; what were your duties during the time you held that office?

A. In general charge of contracting, and reporting to the president.

Q. Now, can you define a little more fully what that means—general charge of contracting? Did that include estimating as well as securing business?

A. The estimates of the American Bridge Company were prepared by the engineering department.

Q. By "estimates" you mean the estimates of quantity?

A. The estimates both of quantity and costs; they might have a job involving erection and take up that portion of the work with the erection department, or if transportation was involved, with the traffic department; the prices of plain material with the purchasing department.

Q. Now, were all of these gentlemen that were engaged in the engineering and erecting, estimating and selling, subordinates of yourself, you yourself being only subordinate to the president?

A. No, sir; as I have stated, the American Bridge Company of New York had nothing to do with anything save sales and erection. The engineering department was primarily a portion of the New Jersey or manufacturing company.

Q. Does it continue to be so?

A. Officially, yes; actually, no.

Q. Explain what you mean by that.

A. I mean that while it still continues and has always been a portion of the New Jersey Company, so far as the estimates which it prepares are concerned, they are done under the general direction of the New York Company and we look upon them as our people.

Q. Will you explain the organization of the American Bridge Company of New York during the period that you occupied the office of assistant to the president; that is, the way it was organized and how it did its business; how it was divided?

A. For the purpose of better handling the sales of the country; that is at that time not only the United States but foreign countries as well, were divided into three divisions known as the Eastern, the Pittsburgh and the Western. The Eastern Division had charge of the export work as well as of that territory comprised or made up of New England, New York State, west to about Syracuse, Pennsylvania west to about Altoona; New Jersey, Maryland, Delaware and Virginia. The Pittsburgh division took in that portion of the United States east of the Mississippi River except Illinois, Wisconsin, the northern half of Indiana, the northern penin-

sula of Michigan not embraced in the eastern division. The western division had the balance of the United States.

Q. Now, has that division of the business of the American Bridge Company of New York been changed at any time?

A. Not to any material degree, save that some three years ago the Pacific Coast states of Washington, Oregon and California were detached from the western division and formed into what we know as the Pacific Coast Department of the United States Steel Products Company. About 1904 the United States Steel Products Export Company was formed.

Q. 1903, wasn't it?

A. I do not remember the date, but about that, and they took over all export work.

Q. How long did you continue to be the assistant to the president?

A. Until February, 1911.

Q. And what office, if any, did you then take?

A. I became division contracting manager of the eastern division.

Q. With your headquarters in New York?

A. Headquarters in New York.

Q. What are the duties of the division contracting managers of the company?

A. They are to secure orders.

Q. What subordinates do you have, if any?

A. We divide the division into districts. Over each district there is a contracting manager. In the eastern division we have three outside offices, located at Boston, Philadelphia and Baltimore. We also have three districts which are handled by as many contracting managers, with headquarters in New York.

Q. Are the other general divisions divided up in a similar way, with contracting agents at different points?

A. They are about the same.

Q. About the same?

A. Yes.

Q. Now, I wish you would describe the engineering department which you have said was practically a branch of the

American Bridge Company of New York, although officially of the American Bridge Company of New Jersey.

A. They have a chief engineer with several assistant chief engineers. They also have a division engineer in charge of each division; those divisions being similar to the contracting division, with headquarters in the same cities. Under the division engineers come the estimating and designing departments; also the plant engineers at the various plants, and the staff of draughtsmen at each plant.

Q. Do you have consulting engineers?

A. We have a consulting engineer.

Q. Who is that?

A. Mr. C. C. Schneider.

Q. Is he a man of some importance in his profession?

A. I believe it is proper to say he has an international reputation.

Q. What do you say as to the efficiency of the engineering department of the American Bridge Company as compared with that of other similar contractors or manufacturers so far as you are able to give an estimate of it?

Mr. Dickinson: I would like to enter a general exception to this line of testimony as irrelevant.

A. We believe we have the best set of engineers that is possessed by any fabricating company in the world.

By Mr. Severance:

Q. What training in general have these engineers had?

A. Many of them were in the subsidiary companies of the American Bridge Company; others have come to us from other companies; we have developed a good many others in our own organization since the formation of the Bridge Company. We have had sufficient work of various kinds so that we could develop one or more of our engineers as experts in that particular line of work. That is, we could specialize. For example, our engineers who design and estimate bridge work do no structural work; men who work on office buildings do practically no mill building work. I could go even further and say that we have engineers who are practically

almost exclusively employed in the designing and estimating of movable bridges.

Q. What is a movable bridge?

A. A swinging bridge or a lift bridge. That is, to continue my answer to the exclusion of fixed bridges or fixed spans.

Q. Do or do not the members in this engineering corps advise with prospective builders of bridges or structural work in the preparation of plans?

A. We have frequently been called in consultation by people who may or may not become our customers.

Q. In cases where you give advice as to plans, is the work then let by competitive bids so that other people have an opportunity to get it?

A. I should say yes.

Q. And do you frequently fail to get the work after you have suggested the plans?

A. We sometimes fail to secure the order.

Q. I will ask you a general question as to the bulk of the business of the American Bridge Company. Is it or is it not secured by competitive bidding?

A. It is.

Q. Are the structures—say, for instance, bridges—that are built by you, of standard type or are the bridges upon which you may bid or other people may bid, made after different specifications special to each case?

A. I do not know that I quite understand you.

Q. I mean, do you have regular standard forms of bridges, or are there plans and specifications made for each individual structure on which you make bids?

A. I should say that we do not ourselves possess what might be termed a standard of bridge work, save possibly in some highway bridges. Some of our customers, however, have standard bridge plans.

Q. Who does the engineering work for the business that you say is transacted through the United States Steel Products Company?

A. We do.

Q. The same corps of engineers?

A. Yes, sir.

Q. Is that skilled corps of engineers of any advantage in securing foreign business for the Steel Products Company?

A. Well, I do not think I am qualified to answer that except in a general way; we know that they do secure business based on our competitive designs.

Q. That is what I mean.

A. But we do not handle the sales——

Q. I understand.

A. And so I cannot say——

Q. But these engineers do prepare what you call competitive designs for the department, do they?

A. Yes.

Q. And business is secured on those designs?

A. Yes.

Q. How are bids ordinarily made upon bridge or structural work—by the pound or by the lump sum?

A. We are governed entirely by the requirements of the customer.

Q. Well, are they made in both ways?

A. They are made in either way, but not generally both.

Q. That is not what I mean. I meant in some cases one is used and in other cases the other is used?

A. If a customer asks for a lump sum bid, providing the data which he is able to give us is sufficiently complete and clear, we will bid a lump sum.

Q. In cases where you bid a lump sum, what, if anything, does your engineering corps have to do with suggesting the design or plan?

A. We may be asked to submit a plan with our bid or we may be asked to bid on the customer's plans.

Q. Sometimes one and sometimes the other?

A. Yes.

Q. What reports, if any, were received at the president's office when you occupied the position of assistant to the president? I mean how closely was that office kept in touch with the work that was being prosecuted and being let—that is, the kind of reports, I mean?

A. We received each day from each division office a printed form or forms on which were given a list of the

inquiries received, bids made, work lost or taken, or its other disposition.

Q. Did those daily reports that came in come under your personal observation?

A. They came directly to me.

Q. So that during the years you occupied that position you were in touch with all the work that was being bid on, secured or lost?

A. I was. I might say that we also received from the engineering department a copy of every estimate prepared.

Q. During the time that you were in this business, before the organization of the Bridge Company and during the early years of that company, were you or were you not familiar with the principal companies that were engaged in this kind of work in competition with the Bridge Company or its subsidiaries?

A. I was acquainted with quite a number of them prior to the formation of the American Bridge Company. Since that time I have become acquainted with a great many more.

Q. Were you during the year 1900 familiar with a great number of them?

A. I considered it a great number.

Q. And did you have any knowledge at that time of the approximate capacity and the character of the work of these various competitors?

A. I tried to familiarize myself with all of those facts.

Q. In connection with these bids that were being made from day to day were you or not in contact and did you learn the names of the companies that were bidding for similar work or bidding against the American Bridge Company, sometimes securing work and sometimes not securing it?

A. Yes.

Q. Did you or not at that time learn as to the ability of the different plants to handle work of different character and different kinds?

A. Yes.

Q. Mr. Davis, have you at my request made up a list, as far as you are able to recall them, of the fabricating plants

that were doing business in 1900 that were not subsidiaries of the American Bridge Company?

A. I have.

Q. And did you add to that list certain companies that you afterwards found were mentioned by Swank in his directory for 1898 and which you did not recall as being in the business until you examined his work?

A. I did.

MR. SEVERANCE: I ask that this be marked as an exhibit.

(The paper referred to was thereupon marked "Defendants' Exhibit (Davis) No. 89, June 20, 1913.")

Q. I show you paper marked "Davis Exhibit 89," June 20th, 1913, and ask you if that is the list that you made up?

A. Yes.

Q. Which ones of the companies in this list did you make up from your own recollection, and which ones did you afterwards annex when you found them in Swank's directory?

A. I dictated from memory all but the last ten names on the last page of this report.

Q. And were all of those companies, with the exception of the ten that you mentioned, recalled by you from your personal recollection as having been in business in the year 1900?

A. They were.

Q. I notice on this exhibit there are three columns of the names and addresses of these various companies; the first is headed "Capacity, net tons, A. L. D." The next is "Swank's, 1898," and the third headed "Page." Explain what those columns are?

A. I prepared this list of competitors whom I recalled were in business in 1900, and gave to each what I, in my judgment and general knowledge of the trade, considered was their capacity. Where I found that they were listed in Swank I used the capacity given in Swank.

Q. That is Swank for 1898?

A. For 1898.

Q. And the word "page" opposite Swank's capacity is the page of Swank's directory for 1898?

A. Yes, on which I found the information given.

Q. And on the last page I notice these last ten that you say you took from Swank's directory which you had not previously recalled, you have the capacity and also pages in the 1898 and the 1903 directory.

A. Yes.

Q. That is, you show the pages in Swank's 1898 and 1903 directory?

A. Yes. I might say that that last list contains the names of those whom I either did not know were in our business at that time, or that I might have known, but did not understand they were competitors operating shops, or else I did not know them at all.

Q. That is the last ten you speak of?

A. The last ten.

Q. Now, Mr. Davis, from your general knowledge of the business acquired as you have stated, and which I interrogated you about a short time ago, and your knowledge of the competitors, do you or do you not state that the capacity of these various works in so far as you have estimated it is in your opinion a very close approximate estimate of the capacity of those respective shops?

A. I think so far as I have estimated it it is a very fair capacity to give to each of these shops.

MR. SEVERANCE: I offer Exhibit 89 in evidence.

(The statement referred to was thereupon marked "Defendants' Exhibit (Davis) No. 89, June 20, 1913," and will be found in the volume of exhibits.)

MR. DICKINSON: I will reserve a right to except on cross-examination.

MR. SEVERANCE: Do you care to have me offer the various pages in Swank's directory shown here?

MR. COLTON: Not if they are the same and have been compared.

MR. SEVERANCE: They have been compared. I know they are correct.

THE WITNESS: I would like to state this: You will find, I believe, that Swank gives the capacities in gross tons. That

has been translated to net tons to agree with the capacities I have given, and where Swank gives an upper and a lower limit for a plant, say from 25,000 to 30,000 tons, I have taken the mean, say 27,500 tons.

By Mr. Dickinson:

Q. So there would be that variance apparently between your figures and his?

A. Yes, sir. I have headed this "net tons."

By Mr. Severance:

Q. Why did you translate it into net tons? State the reasons for that?

A. It is customary in the trade to use net tons; we never use gross tons.

Q. You mean the fabricating trade?

A. In fabricated work I mean.

Q. Then these estimates that you have made of the plant's capacity you have estimated are on the same basis into which you have translated the basis contained in Swank's with the exception you have given?

A. I have given my own in net tons.

Mr. Severance: I will call your attention to one thing; you will find Jones & Laughlin are not listed.

By Mr. Severance:

Q. I call your attention to the fact that this figure is found not in the list of fabricating shops, but the information is contained in the description of Jones & Laughlin; that is correct, is it not, in Swank's?

A. That is right.

Q. The others all appear in so far as they are stated to appear in Swank?

A. Yes.

Q. I wish you would take that list that you have before you, that Exhibit 89, and running down the list of names state from your recollection some of the important work done by different individuals or corporations that appear on that exhibit, which you have stated contains the names of competitors

of the Bridge Company in 1900. Commence at the top and state what you now recall.

A. Prior to 1900?

Q. In 1900, or prior thereto, yes.

A. Megquier and Jones of Portland fabricated local work in Portland and the territory adjacent thereto. The only job of any size that I recall is some paper mills of the International Paper Company in Maine, quite a good sized job. There were several thousand tons in it.

Fletcher & Crowell are a small local concern in Portland, built some school houses, and a general run of structural work.

The Boston Bridge Works built a large number of bridges for the Boston & Maine, the Maine Central, the Central Massachusetts, the Fitchburg and the New York, New Haven & Hartford, and bridges for the City of Boston; one of them was the Harvard Bridge, so-called over the Charles River; the extension of what was then known as West Chester Avenue, I think it is called Massachusetts Avenue now.

Q. Do you remember any buildings they built?

A. Yes, they built the Tremont Building in Boston.

Q. That, for that day, was a large building?

A. That was a very large building in that day. They built a number of other structures in Boston, of which I do not recall the names now.

The New England Structural Company did a large amount of work for Norcross Brothers, with which concern it was affiliated, but that work they got largely without competition.

Q. Who are Norcross Brothers, or who were they at that time?

A. Norcross Brothers were a very prominent firm of general contractors.

Q. Still in business?

A. In business, but not with the same members; still under the name Norcross Brothers, with headquarters in Worcester, Massachusetts. They built the South Works of the American Steel & Wire Company at Worcester.

Q. A large building?

A. Yes, the Washburn & Moen Plant, a large plant.

The Boston Steel & Iron Company, I do not recall any

work that they built of any size. They have since gone out of business.

G. W. & F. Smith Iron Works, Boston; their plant was really located in Roxbury. They built a good deal of the brewery work in that locality, and also school houses, and a general line of structural work. That was also a rather moderate sized concern.

The Eastern Bolt & Nut Company have since gone out of business, under that name, at least. I do not know that it is in business at all, unless the New England Bolt & Nut Works at Everett is its successor, but I am not sure; I do not recall any specific job that they built.

The Chelmsford Foundry Company did a general run of structural work, small buildings particularly, jobbing especially.

James H. Tower at Providence had a very small shop, although he was active as a competitor and bought his larger work largely of the New Jersey Steel & Iron Company.

The Eastern Bridge & Structural Company of Worcester, Mass., they built railroad work for the New York, New Haven & Hartford.

Q. What do you mean by "railroad work," bridges?

A. Bridge work, and building work generally, and their territory was all of central and southern New England. R. F. Hawkins Iron Works had a practical monopoly of the Boston & Albany bridge work.

The Springfield Construction Company, a small concern in Springfield, did some structural work. I recall a highway bridge over the Westfield River at Westfield as one job they built.

The Vermont Construction Company, I have already described what it did.

The Yale Safe & Iron Company, West Haven, a small concern, did a large amount of architectural work in addition to a small amount of structural work, very small.

Q. You did not mention this small company called the Walsh Boiler Works.

A. The Walsh Boiler Works, their principal business was tanks and plate work, but they also did some bridge work and

small structural jobs, such as roof trusses, columns, girders, and work of that character, but it was small. I have given only what I assumed to be their normal capacity of structural work. I have not included their plate and other capacity.

Q. And that is only a part of their capacity?

A. Yes, only a portion.

Milliken Brothers, while a large amount of their business was export, they did a number of jobs in New York, the Commercial Cable Building, the R. G. Dun Building, the old Waterside Station of the Edison Power Company up on the East River about 30th Street, and the Duane Street station of the Edison. They built the Siegel-Cooper Store, did some bridge work on the Choctaw, Oklahoma & Gulf, some on the Plant System. I recall a bridge in Providence for the New Haven Road. I think they did a little work on the Central Railroad of New Jersey. They did very little girder work, and what bridge work they did was largely truss bridges. I might think of a number of others.

Q. Go ahead with any that you recall.

MR. COLTON: Mr. Severance, I understand all this is before 1900?

MR. SEVERANCE: 1900 or before.

THE WITNESS: I am trying to recall those prior to 1900, but it is a long way back.

The Jackson Architectural Iron Works were very prominent in the structural trade here in New York at that time. I do not recall the names of the various buildings, but they specialized in what we knew as loft buildings in New York at that time. They built one large loft that I personally know about on Fourth Avenue about 26th Street, the southeast corner. I cannot recall any other.

Hay Foundry & Iron Works, their work was largely in Newark at that time; they built the Ballantine Brewery. I do not recall any other.

Cooper & Weigand had a small shop here; they were also brokers, what we knew as brokers, and sold work that they bought elsewhere. I do not recall any specific work that they did. The same is true of Rapp & Speidel, who had a small shop and were also in the brokerage business.

Hinkel Iron Works, the same.

The Hedden Iron Construction Co. at Elizabeth, or near there—I call it Elizabeth—that was a small concern and did a general jobbing business, did more or less work.

J. B. & J. M. Cornell were looked upon at that time as being in the very front rank of structural fabricators in New York, they had a very high reputation.

Q. Do you remember any work that they did?

A. Yes, they built the old Equitable Building, recently burned, and built the St. Paul Building, the Mutual Life Insurance Building, the old Court House, and they had a contract for the Hall of Records, but they didn't build it. That was built by Brown-Ketchum; and I am quite sure they built the Waldorf.

Q. How about the World Building; who built that?

A. They built the World Building. In fact a large part of the structural work in New York City prior to 1900 was Cornell's work, and the further back you go the larger the percentage.

The work of the Snead Iron Works was largely ornamental. They had a plant in Jersey City, but their principal plant was at Louisville, Kentucky. I cannot recall offhand any work they did.

Levering & Garrigues had a very small shop at that time. They bought most of their work at that time. Since then they have become very active.

The Lane Bridge Company had a small shop. They built small highway bridges all over the country.

Q. All over the country?

A. All over the east.

Q. Did you not omit the Owego Bridge Company?

A. Yes. I will go back to the Owego Bridge Company. The Owego Bridge Company specialized on highway work. The only highway work of any size I recall their having taken was some pretty large bridges in New Haven, Connecticut.

The next is the Havana Bridge Company of Montour Falls, New York. That is only a small concern. They specialized in the highway bridge line but did some structural work.

The Passaic Rolling Mills Company, Passaic, New Jersey.

At that time that was quite a large, active concern, connected with a rolling mill. Among other works that they built was the Washington Arch over the Harlem River, a large two-span plate girder arch. They built work for the Atlantic Coast Line, they built work for the Maine Central; in fact they had a general run of railroad work.

Q. Did they do any work for the Delaware, Lackawanna & Western?

A. Yes, a very large amount of work for the Delaware, Lackawanna & Western.

Q. You speak of railroad work. When you speak generally of railroad work, what class of work do you mean—bridge work?

A. I have reference to bridge work particularly.

Q. Railroad bridges?

A. Railroad bridges.

The McClintic-Marshall Construction Company of Pottstown, Pennsylvania. As I recall it, they were only organized early in 1900. They were graduates of the Shiffler Bridge Company and they purchased the old Cofrode & Saylor plant at Pottstown, Pennsylvania. I do not know that they built very much work of any magnitude up to the time of which we are speaking. I am trying to think whether the New York Ship-building work was taken by them or finished by them or not, but I cannot recall. I know that work was built at that plant, but I do not know when?

Q. It was built at that plant, but you are not certain whether it was after they bought it?

A. No. That plant, of course enjoyed, from Cofrode & Saylor, a very good reputation, and they had a market practically all over the eastern portion of the United States for railroad bridge work.

Q. Then that plant at Pottstown, which was bought by McClintic-Marshall Construction Company had been in existence doing the same kind of business before they bought it?

A. Oh, yes; but it was closed, I think. According to my recollection Cofrode & Saylor went into bankruptcy and that plant was closed for some time before McClintic-Marshall Construction Company purchased it.

Q. By "some time" what do you mean? I do not expect you to give it accurately, but about what time do you mean?

A. I had business relations with Cofrode & Saylor as late as 1896, I think, and it is my impression, and I am quite sure that the plant was in operation at that time. I do not recall how much later.

The next is the Phoenix Bridge Company and the Phoenix Iron Company, at Phoenixville, Pennsylvania. They might be treated together. I understand they are owned by the same people although the Bridge Company is carried on under Mr. Dean, and he has nothing particularly to do with the Iron Company. The Bridge Company manufactures bridge work and the iron company manufactures structural work for buildings. The Phoenix Bridge Company made a great many structures of considerable magnitude, both built and erected, prior to 1900. I might mention the Rock Island Bridge over the Mississippi River; also another bridge, I have forgotten for what railroad, over the Missouri river at Omaha; the Red Rock cantilever over the Colorado River for the Atlantic & Pacific, now part of the Atchison, Topeka & Santa Fe Railroad. They also built the Pecos Viaduct for the Southern Pacific, or the Galveston, Harrisburg and San Antonio Railroad, as it was then. They built the Chesapeake & Ohio bridge over the Ohio River at Cincinnati. They built a bridge over the Ohio River at Louisville. They built a bridge over the St. Lawrence River at Cornwall. I think that is on the Canada-Atlantic Road. They had a contract for the Quebec Bridge over the St. Lawrence River at Quebec. I suppose I might go on, but that is all I can recall now.

Q. They had done a very large business then in 1900, or prior thereto?

A. Yes. I would consider that they were a bridge shop of first importance.

MR. SEVERANCE: I do not suppose we will be able to finish with this list and it is now four o'clock.

(Thereupon an adjournment was taken until Monday, June 23, 1913, at 10:30 o'clock a. m.)

EIGHTY-SECOND DAY.

EMPIRE BUILDING,
71 Broadway, New York City.

MONDAY, JUNE 23, 1913.

Before SPECIAL EXAMINER HENRY P. BROWN.

Present on behalf of the United States, MR. DICKINSON and MR. COLTON.

Present on behalf of the defendants, MR. LINDABURY, MR. SEVERANCE and MR. BOLLING.

ARTHUR L. DAVIS,

the witness under examination at the taking of adjournment, resumed the stand.

DIRECT EXAMINATION (Continued),

By MR. SEVERANCE:

Q. You said there was a correction you desired to make in your testimony as to Milliken Brothers?

A. Yes.

Q. What is that?

A. I stated that to the best of my recollection in 1900, or prior thereto, they built, among other works, bridges for the Choctaw, Oklahoma & Gulf Railroad. Since Friday, in thinking that over, I am inclined to believe that work was done by them after 1900, about 1901. I cannot place this absolutely, but about 1901.

Q. The last companies concerning which you testified were the Phoenix Bridge and Iron Companies?

A. Yes.

Q. Will you go on and, in answer to my question propounded on Friday, state any business that you recall that was done by the other companies on this exhibit, aside from those concerns which you testified about on Friday, in or prior to 1900?

A. There was the Pennsylvania Steel Company. That built the Union Station in Boston. They had a contract for the suspended span of the Williamsburg Bridge over the East River. They also built the railroad arch bridge over the Niagara Gorge; that is about a 550 foot span. Those are the principal large jobs that I recall.

The Cambria Steel Company principally engaged in fabricating work in connection with their rolling mills for the use of other fabricators. Many of the bridge and structural plants purchased their beam work of Cambria fabricated.

I do not recall any large jobs that they themselves took.

The Penn Bridge Company were a very active concern in the highway field at that time. I cannot say that I recall any work that they did.

Q. You mean any specific work?

A. Any specific work. I used to meet them very frequently in competition.

The Fort Pitt did considerable bridge work, but mostly in Pittsburgh and west of there.

Scaife & Sons were very active in plate work at that time, also in structural work.

Riter-Conley in those days paid more attention to bridge work than they have since. They did some work on the Pennsylvania Lines West, and they were in the construction work for gas plants. They did a good deal of work over at Astoria for the Consolidated Gas Company of New York.

Jones & Laughlin had a fabricating plant much similar to that of the Cambria. The bulk of their work was in punching and framing beams for their various customers. I have purchased work of that character of them.

The Baltimore Bridge Works did some bridge work on the Baltimore & Ohio. I think at that time it was known as the Structural Iron Company; I am not sure.

The Virginia Bridge & Iron Company was not a very large concern at that time. It did mostly highway work.

The King Bridge Company: I think the first big job that I was familiar with that the King Company built was the four track swing bridge over the Harlem River for the New

York Central. They built a new shop for that work. They built work for the Lake Shore, and they built work for the Big Four. They built a great deal of large highway work. A good many of those high level bridges around Cleveland were built by them. They were very active over the entire country.

Massillon Bridge Company, Massillon, Ohio. I met them in connection with a large highway bridge at Livermore Falls, in Maine, a span between 300 and 400 feet long, which they took. I do not recall now any other specific work.

Q. Any other specific work?

A. No, I do not recall. They were very active, doing work largely in the West, where I did not get myself very much, but I know from my general knowledge of the trade that they were very actively employed in railroad bridge work.

The Canton Bridge Company was largely a highway bridge manufacturing company and were very active in the East. We used to meet them on practically every letting.

Brown-Ketchum's work was largely in the West. I recall only one building job that they did in that period. I think they call it the Old South Building, in Boston. It was not until later years that they came into the East, but they were very active in the West and Southwest.

The Chicago Bridge & Iron Company were very active in the West. They built a bridge over the Mississippi at Minneapolis and they built the Wabasha Bridge over the Mississippi. Mr. Horton, the owner of that concern, developed tanks with conical bottoms.

Q. What are they used for?

A. Water works for cities and railroad water stations, supported on towers. Instead of having a flat bottom supported on a platform, it has a self-supporting conical bottom. Many other concerns build them now.

The Kenwood Bridge Company of Chicago. I only recall the Pullman shops. They had practically a monopoly of Pullman's work.

Louisville Bridge & Iron Company, of Louisville, built work for the Pennsylvania Lines West and largely on the Louisville & Nashville. They did a good deal of that work.

Judson Manufacturing Company. They put up, I think

they call it, the Court House in San Francisco. It is located on the site of the old City Hall there.

Q. That is the one that was destroyed in the fire?

A. No, I cannot say as to that. The new City Hall was destroyed in the fire. That is located on Market Street and goes up to Larkin and Ellis, but the old City Hall was located on the corner of Kearney and Washington Streets, and when the new City Hall was built and occupied they tore down the old City Hall and City Prison and built this new structure.

Russell Wheel & Foundry Company, Detroit. They had some Semet-Solvay work. I do not know of any specific work that the others may have built, although I knew they were actively in the business.

Q. Which company are you speaking of?

A. Those that I have not mentioned specifically, I know that they were in business.

Q. In making up this exhibit and in testifying as you have with reference to a large number of them as to specific jobs done by them, do you rely upon your own recollection or have you refreshed that recollection by information received from other people since I asked you to make it up?

A. First I jotted down those that I recalled, and I then discussed the matter, as I have at this hearing, with one or two of my immediate associates in the office, endeavoring to see if they could recall work that I was not cognizant of, and with one or two exceptions I found that I had covered the work. They attributed a number of jobs to some of these that I knew they were not guilty of building, but generally speaking, this is my own work.

Q. Now you say they suggested one or two jobs to you?

A. Yes.

Q. But did anybody suggest to you the names of these concerns that you have put on the list, except as to the few names at the bottom, and which you stated were secured from Swank?

A. I can say positively that this entire list of names is the result of my own unaided effort.

Q. Your own unaided recollection?

A. Yes.

Q. That is, beginning with Megquier & Jones, and down as far as the Russell Wheel & Foundry Company?

A. Yes.

Q. Now, were or were not those companies that you have named in this list in competition with one or more of the companies that were taken over by the American Bridge Company?

A. I should say that every one of them were in competition with one or more of the constituent companies of the American Bridge Company.

(Here a paper was marked "Defendants' Exhibit (Davis) No. 90.")

Q. I show you Defendants' Exhibit (Davis) No. 90, headed "Annual Capacity in net tons in 1900 of the companies which were combined in May, 1900, to form the American Bridge Company." I will ask you who prepared that exhibit?

A. I prepared it. That is, I dictated it to a stenographer.

Q. Did you look it over after it was written out?

A. I did.

Q. Will you state whether or not from your knowledge of the plants the respective concerns mentioned on that exhibit had at that time the capacities shown upon the exhibit?

A. Yes.

Q. It is a correct exhibit, is it?

A. Yes.

MR. SEVERANCE: I offer it in evidence.

(The paper referred to was thereupon marked "Defendants' Exhibit (Davis) No. 90, June 22, 1913," and will be found in the volume of exhibits.)

MR. COLTON: I understand we are reserving the right to cross-examine on that.

MR. SEVERANCE: Certainly.

MR. COLTON: And to except.

By Mr. Severance:

Q. Since the organization of the American Bridge Company will you state what has been done, if anything, towards unifying the capacity, that is, construction of new plants or consolidation of capacity of the various concerns that were taken in.

A. And which ceased to do business?

Q. Which ones, if any, of the American Bridge Company ceased to operate, and where, if at any place, the capacity so eliminated was provided for by new construction?

A. The Berlin Iron Bridge Company has been closed; Hilton Bridge Construction Company has closed.

Q. Give the dates as near as you can, Mr. Davis. You have mentioned the Berlin; when did the American Bridge Company cease to operate that shop?

A. I should say about four years ago. I kept no record of these things.

Q. That is your best recollection, is it?

A. I do not know how close I can get to it. The Hilton plant at Albany has not been operated for about ten years. The Rochester plant eight or ten years. The Buffalo the same. Horseheads, the same. The old plant of the Elmira Bridge Company, which we know as the South Works, has been practically abandoned although the shop is still there, and many of its tools, and we have gone up to Elmira Heights and enlarged the old branch plant of the Elmira Bridge Company into a concern of a capacity of 48,000 tons a year.

Q. Mr. Davis, where is Horseheads located with reference to Elmira?

A. Horseheads is just a few miles north of Elmira.

Q. They are practically together—four or five miles apart?

A. Four or five or six miles; a very short distance.

Q. State whether or not the enlarged plant at Elmira is so located as to take care of business naturally tributary to these companies that you have ceased to operate at Albany, and Rochester, and so forth.

A. Yes, it can take care of a large portion of the work which was previously fabricated at Berlin, Albany and

Rochester; also by the old Elmira Company, and by Groton, Horseheads and Union.

Q. Is the Groton Bridge & Manufacturing plant still in operation?

A. No, sir; it is closed.

Q. When was that closed?

A. Six or eight years ago. I cannot remember; a number of years ago.

Q. In what State is Groton located?

A. Tompkins County, New York.

Q. Where was the Union Bridge located?

A. At Athens, Pennsylvania.

Q. How near is that to the State line of New York?

A. Very close; not a great way from Elmira.

Q. When, if at all, was the use of that plant discontinued?

A. Six years ago, I should say.

Q. Just tell me the ones that are not now in operation.

A. The Schultz Bridge & Iron Company.

Q. Where is that located?

A. Pittsburgh or near there. We call it Pittsburgh.

Q. When did you cease to operate that plant?

A. At least eight years ago; more, I should say. The plant of the Pittsburgh Bridge Company burned, and was never rebuilt.

The Shiffler Bridge Company at the time of the taking over was formed of two plants; one was known as the Shiffler and the other as the Walker. The Shiffler is still in operation; the Walker is not.

Q. When did you cease to operate the Walker plant?

A. My memory is very hazy on a number of those things. It is certainly six years ago, and I think more. The Keystone Bridge plant is out of business.

Q. How long since?

A. I should say eight years at least. New Columbus is out of business.

Q. In what State is New Columbus?

A. New Columbus, Ohio.

Q. When did you cease to operate that plant?

A. Eight years ago, or thereabouts. Youngstown is out of business.

Q. When did you cease to operate that?

A. About the same time. Lafayette is out of business.

Q. When did you cease to operate that?

A. I should say over ten years ago; say about ten; I do not know. The Wagner Company, that is the Milwaukee plant, burned a few years ago; three years ago, about. The others are still in business.

Q. What new plants, if any, have been built to take the place of these plants which you from time to time have ceased to operate, and what is the capacity of the new construction as compared with that which you no longer operate?

MR. COLTON: I object to the question as leading and involving a statement that the plants built were built to take the place of plants abandoned.

(By request, the stenographer repeated the question.)

THE WITNESS: I have mentioned the Elmira plant at Elmira. Then we have a new plant at Ambridge, about sixteen miles down the Ohio River from Pittsburgh, which has a capacity of about 200,000 tons a year. That takes the place of the Walker plant of the old Shiffler Bridge Company, Schultz, Keystone, Pittsburgh, to some extent Youngstown; and it also has additional capacity; that is, its capacity is greater than the combined capacities of the plants which it supplanted.

In the West we have built, at Gary, Indiana, a plant which started in business less than two years ago, with an annual capacity of 120,000 tons. I cannot say that that has taken the place of any of the old shops. It is new construction.

By MR. SEVERANCE:

Q. How did the annual capacity of the American Bridge Company in 1911 compare with its capacity in 1900?

A. Oh, it was considerably greater. Do you wish me to give the figures?

Q. If you can.

A. In 1900 we claimed that we had a capacity of about

460,000 net tons. In 1911 I think we would claim a capacity of about 720,000 tons, or say 60,000 tons a month.

Q. What do you mean by "claiming" a capacity? Do you mean you had that capacity or merely asserted it?

A. No; we had that capacity; we could do that amount of work if we could get it.

Q. In what manner, if at all, have you specialized in your work at the various plants, that is, as to the character of the work done at the different plants?

A. Well, in the old days each of the shops did practically everything entering into any special order. At the present time, if we have a building job——

Q. By the present time, you mean 1911, or this date?

A. 1911, since the formation of the American Bridge Company, and since the time when we were able to get it whipped into shape. In the case of a building job in the East we would put the beam work at Pencoyd, and we might assign the riveted work, such as columns and girders, to any one of a number of plants, one or more. The riveted work might go to Pencoyd or Edge Moor or Trenton or Elmira or Brooklyn, but the beams would go to Pencoyd. In the case of a pin-connected bridge, having eye-bars, in place of manufacturing the eye-bars at any one of several plants, we have located the eye-bar plant at Ambridge. That plant does all of the eye-bar work for every job. We make our castings, such as we use in connection with our own work, either of steel or iron or brass, at some one central branch.

Q. What advantage, if any, is there in this specializing of work?

A. It tends both to efficiency and economy.

Q. Why?

A. Well, take for example beam work. By consolidating our beam work in the East, at Pencoyd, it enables us to use special machinery having vastly greater capacity than any individual shop having only its own work to get out would be justified in installing. It would mean a large investment of money, and the capacity would be so great that the machinery would be idle the larger portion of the time. By consolidating our work of that character at one plant we are

practically able to keep that special machinery employed at all times.

Q. Now, you speak of machinery. You have other things besides machinery in your plants that are required for turning out this work, that give you some advantage in specializing?

A. We have an organization which we think is worth more than the machinery.

Q. Do you have any tools outside of what you term machinery?

A. I am using "machinery" as a general expression.

Q. In the sense of equipment?

A. Any mechanical contrivance used in the preparation of our work.

Q. Now, suppose instead of the business being done in the East, as in the case you have just illustrated, the business is to be done in the Pittsburgh Division. Have you specialized in any way out there?

A. You mean taking the same example of a building with beams?

Q. Yes.

A. Why, yes, we place the beam portion of the work at Ambridge, and the riveted portion of the work may go to any one of a number of plants or be done at Ambridge.

Q. How about the West?

A. In the West, as far as possible we endeavor to put the beam work for the western jobs at Ambridge, but if that plant cannot handle them we then place the balance at Gary, which is equipped to do beam work. The only reason we do not do as much beam work at Gary is because we are able to get more of our beams from the Pittsburgh mills than we can from the Chicago mills, and the freight rate is just the same on the material whether it is fabricated at Pittsburgh for a Chicago job or whether it is fabricated at Gary.

Q. I did not quite understand that last answer you made about the freight rate being the same from Gary as Pittsburgh; did you mean that?

A. I said for a job located at Chicago. Assuming that a job is located at Chicago, the freight rate on either plain

material from Pittsburgh to Chicago or fabricated material, is 18 cents per hundred pounds.

Q. I see what you mean.

A. If we have the material at Chicago we have to pay 18 cents a hundred pounds more for it than if we bought it at Pittsburgh.

Q. That is owing to what is known as the Pittsburgh base price?

A. That is the way we understand it, Pittsburgh base.

Q. Does that ordinarily apply as against your company?

A. Of course for the last two years——

Q. Up to that time, up to two years ago?

A. Yes, we always used the Pittsburgh base in estimating our work.

Q. What advantage is there, if any, in having fabricating shops located in different parts of the country instead of having only one shop and all the work consolidated at that shop?

A. Well, there are a great many reasons; for example, a local shop has the advantage of being near the work and if necessary can get out a job more nearly in the order in which a contractor might require it, than could a shop located a thousand miles away. We could supply more readily any missing material. There is a certain element in connection with the sale of work wherein a local shop has a certain advantage: the local people are more apt to favor a local shop.

Q. You spoke of making all of your eye bars at Ambridge. Do you make eye bars other than those required for your own use?

A. You mean do we sell them to the trade?

Q. Yes, do you sell them to the trade?

A. Yes.

Q. Are there other manufacturers who also make eye bars?

A. Yes; the Phoenix Bridge Company make eye bars; so also does the King Bridge Company of Cleveland.

Q. What is the expense of construction of a first class eye-bar plant, testing machine, and so forth?

A. To build a good modern eye-bar shop, equipped with all tools and machinery and with proper testing machine, because all of those bars are subject to test, would involve an outlay of at least half a million dollars.

Q. Previous to the time that you had the plant at Ambridge, where did you make eye-bars, if at all?

A. We made eye-bars at Berlin; the Berlin Iron Bridge Company; and we made them at Edge Moor, and at Pencoyd, Athens and Keystone.

Q. With the character of eye-bar plants in existence at those scattered points, was it or was it not possible to make eye-bars as economically as when the work was consolidated?

A. It was not.

Q. Is the consumption of eye-bars sufficient to keep that plant in operation all the time?

A. You mean the total consumption of the country?

Q. I mean the total tonnage that you are able to use and sell?

A. It is not.

Q. You sell largely in the trade, however, do you not?

A. We sell to the trade generally.

(A paper was here marked "Defendants' Exhibit (Davis) No. 91."

Q. I show you Defendants' Exhibit (Davis) No. 91, headed "List of some products, other than bridges and buildings, manufactured by the American Bridge Company, and also made by certain of its competitors." Who prepared that list?

A. I did.

Q. You mean from your general knowledge of the trade?

A. Yes.

Q. You have, I notice, on that list certain specific articles, under that the names of certain concerns. What does that signify, that those concerns make them?

A. Yes, they make the various products under which they are listed.

Q. You are familiar with that fact from your own knowledge of the trade, are you?

A. Yes, sir.

Q. And were these concerns engaged in that business in 1911?

A. Not all of them.

Q. Will you state which ones were not?

A. To my knowledge?

Q. To your knowledge, yes.

A. Under "Barges," Jones & Laughlin were not.

Q. That is, they have gone into the business since 1911?

A. Since 1911 they have made barges. It was about that time that Des Moines started its barge plant at Neville Island, out of Pittsburgh. I do not think they had built a barge in 1911, but they owned the property there and had, I am quite sure, started their plant.

Q. They had what?

A. Started the plant.

Q. Started the construction, you mean?

A. Yes, started the construction; but I do not think they really began to make barges as far back as 1911. The Chicago Steel Products Company is a concern that was not in business in 1911 under that name. It was then known as George W. Jackson, Incorporated.

Q. Was the plant in existence at that time?

A. The plant was in existence.

Q. And was it making tanks at that time?

A. Making tanks.

Q. So that is merely a change of name, is it?

A. A change of name. William Graver, I did not know as being in the trade in 1911. I have since learned it, although I am quite sure he was in business, but I could not state that of my own knowledge. Under "buckle plates," I do not think the Independent Bridge Company made them in 1911, but I do not know that of my own knowledge.

Q. You say you do not think they did, or you do think they did?

A. I do not know of my own knowledge that they made buckle plates in 1911. "Transmission towers," the Blaw Steel Construction Company did not make them in 1911.

Q. Outside of the ones that you have mentioned, then, do I understand that all of these concerns were engaged in business in 1911 and were making the character of product stated on Exhibit No. 91?

A. To the best of my knowledge they were.

Q. You are speaking of your knowledge?
A. Yes, sir.

MR. SEVERANCE: I offer Exhibit 91 in evidence.
(The paper referred to was thereupon marked "Defendants' Exhibit (Davis) No. 91, June 23, 1913," and will be found in the volume of exhibits.)

By MR. SEVERANCE:

Q. Taking these items in their order, when was the making of steel barges begun, if you remember?

A. Well, before the days of the American Bridge Company; the Schultz Bridge plant built one barge on the river; as recently as four years ago I know that barge was still in existence, but the barge business as we know it is strictly a development of the American Bridge Company at its Ambridge plant.

Q. When was the Ambridge plant built, do you remember?

A. The property on which the Ambridge plant is located was purchased by the Berlin Iron Bridge Company either late in 1899 or early in 1900, and they had begun the erection of buildings on that site when the American Bridge Company was formed. The building of the present plant was begun by the American Bridge Company very shortly after the company was formed; I might say almost immediately.

Q. You have listed quite a large number of concerns here as engaged in the business of manufacturing tanks. What kind of tanks are covered by the exhibit?

A. Almost anything which might be intended to hold liquids, or in fact, some solids. You might build grain tanks—I could not say what you might not build in the line of tanks.

Q. By "grain tanks" you mean these steel construction elevators, do you not?

A. Yes.

Q. About what percentage of the tank business in the country would you say is done by the American Bridge Company, or was done by it in 1911?

A. It is very small. I would not hazard a guess, even. We build a good many tanks, but just what percentage the ton-

nage of those we build is to the total tonnage of the country is something I could not say.

Q. Is or is not the tonnage built by your competitors much larger than that built by you?

A. Oh, yes, I can answer that. It is much larger.

Q. You say you would not hazard a guess as to the percentage. Would you say you built ten per cent.?

A. I should question it.

Q. I see quite a number of concerns here engaged in riveted pipe work. What is that riveted pipe used for?

A. The pipe that we have built has all been used in connection with either power development, that is hydraulic developments, or in irrigation projects.

Q. Do you do a large or a small percentage of the business of the country in riveted pipe?

A. Small. I should say less than ten per cent.

Q. There are several concerns here building transmission towers. What are they for?

A. In recent years there has been a very great development of electric power transmission lines for long distances, and in connection with that there has been a development of skeleton frame towers, varying in height and weight. They are generally galvanized. Several concerns have entered into the manufacture of that character of work.

Q. Was your company the pioneer in that work, or were there others ahead of you?

A. There were others ahead of us; we were trailers.

Q. Do you do a large or a small percentage of that business, as compared with the country at large?

A. I should say that we do about twenty per cent. of it.

Q. Where is that business done; that is, where are the towers erected? All over the country?

A. All over the country, and exported.

Q. When you speak of doing about twenty per cent. do you include in that the total domestic consumption or the total manufactured?

A. The total manufactured.

Q. Do you do more exporting in proportion than the others, or less?

A. I am not in a position to answer that question.

Q. I see there are a number of concerns here making turntables. Those are, I suppose, ordinary railroad turntables, are they not?

A. Yes, sir.

Q. Do you do a large or small business?

A. We do a very large percentage of that business.

Q. And have you, for a long period of time past?

A. We have.

Q. There is one question that I neglected to ask you in connection with Exhibit No. 89. It is alleged in the petition in this case, relative to the American Bridge Company, after alleging the organization of the company and the issuance of stock, as follows:

"The said American Bridge Company had acquired and exercised a practical monopoly in the bridge business of the United States."

What do you say as to that allegation?

MR. COLTON: I object to the witness as incompetent to express an opinion on this question, as it involves a mixed question of law and fact, and upon the further ground that it involves a conclusion and the mere opinion of the witness upon facts not fully disclosed.

MR. SEVERANCE: Are you willing to concede on the record that, in view of what the witness has testified to, that allegation is wrong? Read the question.

(By request the stenographer repeated the pending question.)

THE WITNESS: In 1900 all of the bridge work built in this country could have been built by the concerns which did not enter into and form a part of the American Bridge Company; that is, they had facilities and capacity for doing the work, had they chosen to have done so.

Q. Well, then, that being the case, would you say that the Bridge Company had a practical monopoly of the bridge business? That is not limited to any particular style of bridge, but to the bridge business of the country.

MR. COLTON: I object to counsel arguing with his own witness.

MR. SEVERANCE: That may be regarded as an argument, but I do not mean it as an argument. Will you please answer the question?

THE WITNESS: It never had a monopoly, never has had, as I understand the word "monopoly."

MR. COLTON: Objected to on the ground that the witness has not shown what he understands by the word "monopoly."

By MR. SEVERANCE:

Q. What do you understand by the word "monopoly"?

A. By monopolizing a thing, I understand practically controlling it to the exclusion of anyone else.

Q. That is a good definition. Now, Mr. Davis, will you state whether or not from your knowledge of the business of the American Bridge Company in 1900, or the companies that went into the American Bridge Company, they built even a majority of the highway bridges of the country?

A. Highway bridges?

Q. Yes.

A. I should say no.

Q. I mean the steel highway bridges, such as built by them.

MR. COLTON: I except on the ground that the witness has not been qualified to answer this question, and has not been shown to have a detailed knowledge upon which to base any such answer, and as calling for a mere opinion instead of facts.

THE WITNESS: No.

By MR. SEVERANCE:

Q. Can or cannot the same shop facilities be used in fabricating bridge work and structural work?

A. To a large degree they are interchangeable. That is, a very great proportion of the tools and equipment of a shop which makes bridge work may also be used in making structural work.

Q. Who are the principal manufacturers of gas holders in this country?

A. I should name Riter-Conley as being the principal ones. After them come one or two others, such as Bartlett & Heyward, of Baltimore; they are a very large concern. I do not think they are quite equal in size to Riter-Conley.

Q. What are penstocks?

A. A penstock is a name applied to a tube, generally a riveted steel tube, which permits the water to enter the water wheel; carries the water from the flume into the water wheel.

Q. Is that a large business in this country in the aggregate?

A. It is larger in dollars and cents than it is in tons.

Q. Do you have a large or a small percentage of that business?

A. Very small.

Q. What concerns are there that are largely engaged in that business in this country?

A. Making penstocks?

Q. Yes.

A. Practically all of the concerns that make riveted pipe make penstocks.

Q. I want to ask a few questions about some of the concerns appearing on Defendants' Exhibit 11, about which I interrogated Mr. Farrell. Would you like to find it, Mr. Colton, so as to follow it?

MR. COLTON: What page did you say?

MR. SEVERANCE: Page 118, Volume 1, Defendants' Exhibits.

By MR. SEVERANCE:

Q. Do you know of Henry Ahr Iron Works, New York City, as in business in 1911, and if so in what class of business?

A. They have a small structural plant.

Q. Here in New York?

A. Here in New York.

Q. Now, when you speak of structural plants do you mean that they are engaged in the structural business or merely had a plant?

A. Engaged in the business.

Q. And by structural do you include bridges or not?

A. No, I do not include bridges.

Q. You don't include bridges?

A. No, I have reference to building work.

Q. I will ask you similar questions with reference to certain other concerns without repeating the whole question every time, but will merely give you the name.

Chester B. Albree, Pittsburgh, Pennsylvania.

A. Yes. He specializes in bridge railings, but he also makes structural work.

Q. You understand all my questions apply to May, 1911, the date of this exhibit?

A. Yes.

Q. Alderhurst Iron Company, New Haven, Connecticut?

A. Yes, a very small concern up in New Haven, structural work.

Q. Were they in business at that time?

A. Yes, I assume that is what you mean.

Q. That is what I want you to answer.

A. They were in business in 1911.

Q. What kind of business?

A. Small structural business.

Q. Alexandria Iron Company, Alexandria, Virginia?

A. They are in business, structural work.

Q. They were in business, you mean, in 1911?

A. Yes, they were in business.

Q. Charles B. Bancroft, Philadelphia?

A. They were in business, a small shop, structural work.

Q. Charles Bayer Company, New York City?

A. They were in business, structural shop, small.

Q. Berkeley Steel Company, San Francisco, California?

A. Yes, they are in business, small structural shop. Berkeley was once in our employ.

Q. When you say are in business you mean they were in 1911?

A. Yes; they were in 1911. I assume this list is of 1911.

Q. My questions are all directed to that time.

A. They were in business in 1911.

Q. Then if you will answer as of that date, and if any of

them have since gone out of business which I ask you about, please state that; if not, we will assume they are still in business.

Berlin Construction Company, Berlin, Connecticut?

A. They were in business in 1911, and built bridges and structural work.

Q. The Bethlehem Foundry & Machine Company, Bethlehem, Pennsylvania?

A. They were in business in 1911. Since then they have discontinued doing very much in the structural line, restricting themselves to the foundry end of their business, which was the larger part of the work.

Q. Charles P. Biggin & Company, Philadelphia?

A. They were in business, a small structural plant.

Q. Bridgeport Boiler Works, Bridgeport, Connecticut.

A. They are a small concern; they were in business in 1911.

Q. Caldwell & Drake, Columbus, Indiana?

A. I know they were in business in 1911. They made structural work, did some bridge work.

Q. The Carolina Engineering Company, Burlington, N. C.

A. Bridge work; they did some structural work, not much; a small plant.

Q. Champion Bridge Company, it is called here, Wilmington, Ohio?

A. That is the one I corrected this morning.

Q. In the other list?

A. Yes. They were in business in 1911.

Q. Chesapeake Iron Works, Baltimore, Maryland.

A. They were in business, structural work; they have a fair-sized plant down there.

Q. George B. Clopp, Philadelphia?

A. A small shop, structural business; they were in business.

Q. John J. Davies Company, Philadelphia, Pennsylvania?

A. They were in business; a small shop.

Q. What kind of business?

A. Structural work.

Q. Decatur Bridge Company, Decatur, Illinois.

A. They were in business; bridge work, building highway bridges particularly; also did some small railroad work.

Q. Was it an active concern?

A. You mean was it then?

Q. Yes, in 1911.

A. Yes, it was fairly active in 1911; they had quite a nice little shop.

Q. Are they still in business?

A. Still in business, so far as I know. I cannot say; I have not met them in competition or heard of them directly since 1911.

Q. Richard DeCou, Philadelphia, Pennsylvania?

A. Small structural shop; he was in business.

Q. Dildine Bridge & Construction Company, Cameron, Maine?

A. Missouri.

Q. It is not printed Missouri here; it is printed Maine.

A. It should be Missouri; Cameron, Missouri. They were in business in 1911; highway work, did a little structural work if they could get it.

Q. Thomas Dimond, New York City?

A. He is out of business now. He was in business in 1911. He sold his property to the Pennsylvania Railroad.

Q. What business was he in then?

A. Structural business.

Q. El Paso Foundry & Machine Company, El Paso, Texas?

A. Yes, they were in business, highway bridges particularly; did some bridge work; they bought a great deal more than they built themselves.

Q. What do you mean, bought stuff fabricated and erected it?

A. Yes, they erected it.

Q. H. F. Elwell, Springfield, Massachusetts.

A. A very small concern up there; does a little jobbing work in the structural line.

Q. Felgenhauer's Sons Company, Brooklyn?

A. Yes, they were in business, structural work.

Q. Anton Fluegal, Brooklyn?

A. Yes, he was in business; he has a little larger shop, not

very large, though, a small jobbing proposition in structural work.

Q. Charles H. Fox, New York City?

A. He is in business, a small structural shop. He was in business in 1911.

Q. Friberg Iron Works, Brooklyn?

A. I am of the opinion that they were in business in 1911. I am trying to think whether they are still in business: I cannot recall, but I am of the impression they were in business in 1911; a small structural shop.

Q. And whether they are now or not you are not sure?

A. I am not certain.

Q. I do not know whether this is Golden Klein or Klein Golden.

A. Golden Klein.

Q. Golden Klein Iron Works, New York City.

A. They were in business, structural work.

Q. Chris Hafers Iron Company, New York City?

A. They were in business, still are; small structural shop.

Q. Adam Happel?

A. He was in business, still in business.

Q. What kind of business?

A. Structural business, small structural business.

Q. H. C. Harrower Company, Buffalo, New York?

A. Yes, they were in business in 1911, structural work.

Q. Henry A. Hitner Sons, Philadelphia?

A. They were in business, structural business.

Q. Irving Iron Works, New York City?

A. They were in business, structural work.

Q. Kemper Construction Company, Philadelphia, Pennsylvania.

A. They were in business, structural work.

Q. Lewinson & Company, New York City?

A. Max Lewinson; he had a little shop in 1911. He told me he had closed it up, but he is still in business as a broker; that is, he buys his fabricated work now.

Q. William E. Lyon Iron Company, New York City?

A. Yes, they are still in business, structural work; small.

Q. Mahoney Manufacturing Company, Troy, New York?

A. Very small structural plant; they were in business in 1911.

Q. James H. McGill, Washington, D. C.?

A. Yes, he has a very small shop down there. He was in business; still is. Structural work. He might do a little bridge work there, but not to any size. I would not call it a bridge shop.

Q. James McKinney Sons, Albany, New York?

A. "& Sons."

Q. It says "McKinney Sons" here.

A. I think it is James McKinney & Sons. It is a very old concern in Albany. They were in business in 1911; still in business. Structural shop.

Q. Merritt & Company, Philadelphia, Pennsylvania?

A. They were in business; structural.

Q. Are they still, or don't you know?

A. I believe so.

Q. Moran Company, Seattle, Washington?

A. They are still in business; that is simply a small portion of the old Moran Shipbuilding Company out there. They were in basiness then and still are in business. A very small shop, very small capacity, though, as regards our character of work.

Q. New England Bolt & Structural Company, Everett, Mass.?

A. Yes, they were in business, and are still, right alongside the New England Structural Company.

Q. What capacity?

A. Structural work.

Q. Oregonia Bridge Company, Oregonia, Ohio?

A. They were in business prior to the formation of the American Bridge Company, and still in business.

Q. What kind of business?

A. Bridge business, principally.

Q. S. P. Pearson & Company, New York City?

A. Yes; a small structural shop here in New York; they were in business, and are still.

Q. Poppke & Son, Brooklyn, New York?

A. They were in business; small structural plant.

Q. Rapp Iron Works, New York City?

A. They were in business; structural work.

Q. William F. Remppis Company, Reading, Pennsylvania?

A. Yes; they are in business; they are a small shop and do structural work. They might do bridge work if they could get it.

Q. E. P. Reynolds Company, New York City?

A. The name sounds familiar, but I cannot recall them now.

Q. Rogers Brothers, Albion, Pennsylvania?

A. Yes; I remember them very well.

Q. Is that an active concern?

A. It was active about that time in the contracting field, much more so than it was in the fabricating.

Q. What sort of work did they do?

A. They took both bridge and structural contracts. Most of the work concerning which we came in contact with them was structural work.

Q. Ross & Sisti, New York City?

A. They were in business, structural work, small.

Q. Sandblom Iron Works, Brooklyn?

A. That is Gus Sandblom. He has a small plant over in Brooklyn. He used to be engineer for the Heela Iron Works, when they were in the structural business. When they ceased to do structural work, Sandblom started this plant for structural work.

Q. Paul Scherbner, New York City?

A. Paul Scherbner, Jr., & Company, New York City. They are in business and have a small plant in New York City.

Q. What kind of work do they do?

A. Structural work.

Q. Smyser-Royer Co., Philadelphia?

A. They were in business; they had a structural plant.

Q. Steel & Wike, Philadelphia?

A. They are in business, and growing. They were in business in 1911.

Q. They are growing, did you say?
A. Yes; they are growing.
Q. Stewart & Stevens Iron Works, Philadelphia?
A. I don't recall them.
Q. Tippet & Wood?
A. Phillipsburg, New Jersey?
Q. That is right.
A. They are in business.
Q. What kind of business?
A. Bridge business; structural business.

Q. Previous to the organization of the American Bridge Company, what particular class of work did the Post & McCord Company chiefly do?

A. You might say they did practically nothing but structural work, as represented in office and loft buildings in New York City and vicinity, hotels, and work of that character.

Q. Chiefly in the Metropolitan District, were they?

A. Chiefly in the Metropolitan District. They built a transfer bridge that I recall for the New Haven Railroad, at, I think, what we call Oak Island, up in Harlem. The bridge business was something they did not go into at all, practically.

Q. What business were the Hilton Bridge Construction Company of Albany in?

A. Railroad work and some highway work. Call it bridge business altogether. I never knew of their doing any structural work.

Q. Mr. John Sterling Dean, a witness on the part of the petitioner in this case, testified at page 767 of Volume II of the record as follows:—he then being interrogated with reference to the companies that were taken over by the American Bridge Company:

"Q. The Hilton Bridge Construction Company of Albany, New York?

"A. What company was that?

"Q. The Hilton Bridge Construction Company.

"A. They were entirely makers of highway bridges. I am not familiar with them."

What was the fact with reference to their being entirely engaged in the highway business?

MR. COLTON: I object to counsel reading to the witness what others have testified to in the case, as improper examination, especially during direct examination.

A. Well, I know of railroad work that they did build. In fact, I have sublet railroad bridge work to them myself which they built in their own shop.

Q. In what section did they do railroad work?

A. They practically were limited to the territory east and north.

Q. East and north of what?

A. Of Albany, where they were located, unless they could sell a bridge to the New York Central f. o. b. cars their plant. They did considerable work for the New York Central.

Q. What class of work did the Groton Bridge Company do?

A. I should class them as a highway bridge shop. They did a little structural work, but not much.

Q. What did the Horseheads Bridge Company do?

A. Only highway work.

Q. The Elmira Bridge Company, Limited.

A. They built railroad and large highway bridges; railroad work was their specialty.

Q. Where was their normal market?

A. Their normal market was east, north and south of their plant, although I know of work that they shipped to Chicago.

Q. What work was that?

A. That was one of the elevated railroads.

Q. Was that usual or unusual?

A. That was rather unusual; the freight was distinctly against them.

Q. When you say north, east and south, how far would you say?

A. They could go north to the Canada line; they could go east just as far as they liked, and they could go south until they met, or rather, were confronted by prices made by shops having a more favorable freight rate. I have an idea, and of course it is true on a good deal of this work, that financial arrangements, or something else, might enter into a contract

for a point that is not normally in the territory that the plant would supply.

Q. That is always so, is it not?

A. Undoubtedly.

Q. The Berlin Iron Bridge Company; where did they do business?

A. Well, the normal territory of the Berlin Iron Bridge Company was the eastern part of New York and New England. They have shipped work into Texas; they have shipped work to Butte, Montana, and they have done work in Tennessee. They did a great deal of export work.

Q. What kind of work did they do, what class of work?

A. They specialized on what we call mill building construction; in fact, they were practically the pioneers in the development of mill building construction.

Q. What kind of mills, or what kind of mill buildings?

A. Light manufacturing plants, where they were only one story high, or one story high with a gallery, such as are in use in machine shops, rolling mills, shipbuilding plants, and work of that character. They did railroad and highway work.

Q. Were there any other constituent companies taken over by the American Bridge Company which specialized in that same thing?

A. Yes.

Q. Who were they?

A. Shiffler and Gillette-Herzog.

Q. That is, one in Pittsburgh, one in Minneapolis and one in New England?

A. Yes.

Q. Rochester Bridge & Iron Works; what class of work did they do?

A. Railroad bridges. They made riveted pipe also. They had a plant for making riveted pipe.

Q. Which, if any, of the other companies that went into the American Bridge Company made riveted pipe at that time?

A. Why, there were several of them that at one time or another made riveted pipe, which requires no tools not generally used in a bridge or structural plant, unless it possibly

might be the addition of bending rolls, but those plants generally had those anyway.

Q. That is simple work that could be done by any structural plant?

A. Yes, could be done by any plant.

Q. What class of work did Pencoyd, A. & P. Roberts, do?

A. That was a very large plant, and they did both bridge work and structural work.

Q. Was it large or small sized?

A. That was a large plant.

Q. I do not mean the plant. I meant the character of the work; did they do heavy work or light work?

A. They did heavy work exclusively.

Q. I did not ask you about the Buffalo plant. What did they do?

A. Structural work.

Q. In what vicinity was their chief business?

A. Buffalo. Their territory was very restricted, because they had Pittsburgh on one side of them and very active people on the other.

Q. The Union Bridge Company at Athens, what class of work did they do?

A. They did bridge work when they could get it; when they could not they took structural work.

Q. What kind of bridges, highway or railroad?

A. Railroad bridges and highway bridges, too, if they were of sufficient size. They were a very well known concern and shipped over a very wide territory.

Q. The New Jersey Steel & Iron Company, what kind of work did they do?

A. They did a general line of work, say about one-third of their work was bridge work, railroad and large highway bridges, and the balance was structural work.

Q. What did the Edge Moor Bridge Works do?

A. They did bridge work to the exclusion of everything else; that is, railroad bridges and large highway bridges, unless they could not get enough to fill their shop, when they would make structural work, and they did do some structural work.

Q. That was a very minor percentage, was it not?

A. A very small percentage, but the structural work they took was of large size.

Q. What did the Schultz Company build, Pittsburgh?

A. Railroad and highway bridges and structural work.

Q. Which was the larger portion of their work.

A. Highway bridges.

Q. And in what part of the country did they do most of their business?

A. Well, being located in Pittsburgh they could ship anywhere on an equal basis with reference to freight with any other concern.

Q. They did ship pretty generally, did they?

A. Yes, they came into New England quite a bit, and into New York.

Q. Did the Pittsburgh Bridge Company have any special line of work?

A. The Pittsburgh Bridge Company specialized on highway bridge work, which they shipped all over the country. We also knew them as Nelson & Buchanan.

Q. How about the Shiffler; what kind of work did they do?

A. The Shiffler Bridge Company was largely structural work; they did do a little railroad work, and some highway bridge work. They used to build open hearth plants and rolling mills and mill plants generally.

Q. What kind of work did the Keystone ordinarily do?

A. The Keystone built heavy work both in bridges and structural, for a very large territory.

(Thereupon a recess was taken until 2 o'clock p. m.)

AFTER RECESS.

ARTHUR L. DAVIS,

the witness under examination at the taking of recess, resumed the stand.

DIRECT EXAMINATION (Continued),

By Mr. Severance:

Q. What sort of work did the Wrought Iron Bridge Company engage in at that time?

A. The Wrought Iron Bridge Company was largely a highway bridge shop.

Q. Where are they located?

A. Canton, Ohio.

Q. Where was their market?

A. Their market was all through the East and South, and Central West.

Q. Did they build bridges of iron or steel?

A. You are speaking now with reference to 1900?

Q. 1900.

A. Practically no iron was used at that time in construction work.

Q. Had that company originally been using wrought iron?

A. Oh, yes; they had been in business a great many years.

Q. Is the Wrought Iron Bridge Company's plant still in use?

A. Yes, sir.

Q. Has it been enlarged?

A. It has not.

Q. The same plant, is it?

A. Yes, sir.

Q. Are they doing substantially the same kind of work?

A. They are doing there some highway work, and also light structural work; mill buildings.

Q. What kind of work did the New Columbus Bridge Company do?

A. The New Columbus was a small concern; largely highway bridge work, a little bit of structural work, not much.

Q. In what section?

A. Well, just in the central West, near their plant.

Q. The Youngstown Bridge Company.

A. The Youngstown Bridge Company did some railroad work; they got work that I know of on the Baltimore & Ohio, and they did some of the smaller bridges on other roads nearer their location; they did a great deal of highway work too.

Q. The Lafayette Bridge Company.

A. The Lafayette was pre-eminently a highway shop.

Q. Where was their market?

A. Their market was a very narrow one, located around Indiana and the Lakes.

Q. The Detroit Bridge & Iron Works.

A. The Detroit Bridge & Iron Company, Detroit, specialized on railroad bridge work, of which they had done a great deal; it is an old concern. They did very little structural work.

Q. Where did they do business?

A. Their railroad business was done all over this country and in Canada.

Q. The American Bridge Works, Bridge Department?

A. They are in Chicago. So long as they could get it they did absolutely nothing but plate girder railroad work; they did some riveted lattice work for railroads. I never heard of their doing any structural work; in connection with the plant they had a forge department.

Q. The Lassig Bridge & Iron Works?

A. The Lassig Bridge & Iron Works of Chicago manufactured railroad work.

Q. Altogether?

A. Practically altogether; I never knew of their doing anything else unless it was for a railroad and the railroad asked them to do it.

Q. J. G. Wagner Company?

A. J. G. Wagner, Milwaukee; they did railroad work and structural and highway work.

Q. Gillette-Herzog?

A. Minneapolis. They specialized on mill building work and on highway bridges. They may have built a few small railroad bridges.

Q. The Koken Iron Works?

A. St. Louis. Structural work of the heavier type for the City of St. Louis and vicinity.

Q. That plant and the Gillette-Herzog are both in operation?

A. Both in operation.

Q. Will you state whether or not each of these plants in its various lines and in its various localities in 1900 met with competition from outside companies?

A. Oh, yes. I do not think there is a single one of them that had not competition from outside concerns.

Q. In all their different lines?

A. In the different lines.

Q. Which ones of these companies, if any, at the time of the organization of the Bridge Company, rolled their own steel?

A. The Pencoyd plant of the A. & P. Roberts Company had a rolling mill; they could not roll plates there, that is as I recall it, they could not roll plates above twelve inches. They could roll what we call grooved mill plates up to 12 inches, but the plates were purchased outside. Then of course the Keystone was allied to the Carnegie Steel Company and with these two exceptions—those are the only two that had any rolling mill capacity.

Q. They had to buy their steel, did they?

A. Yes.

Q. Were any of these companies large enough so that they could have afforded to build an economically sized rolling mill as an adjunct to their fabricating shops outside of Pencoyd and Keystone?

A. Not even those two could run a rolling mill profitably, I should say.

Q. How is that?

A. I do not think even those two were big enough to run a rolling mill profitably if they were to depend on consuming the entire output of the rolling mill in their own plants.

Q. The Roberts Company sold shapes in the market, didn't they?

A. They always have, to my knowledge, they have sold to outsiders.

Q. Then answer my question directly: Were there any of the other constituent companies that could have afforded to establish a rolling mill as an adjunct to their fabricating plants?

A. I should say no.

Q. Had any of those companies that went into the Bridge Company, I will say outside of Pencoyd, ever had puddling furnaces, manufacturing muck bars, not including the Pencoyd?

A. Not to my knowledge; the Pencoyd had no puddling furnaces at the time the American Bridge Company——

Q. No, not at that time, but they had previously?

A. Oh, yes; they made iron.

Q. Do you know whether any of the rest of them had previously made iron?

A. Not to my knowledge.

Q. Have any of the competitors of the American Bridge Company increased their capacity and output since 1900?

A. Oh, yes.

Q. Have any new plants, fabricating plants, been established since that time that are competitors with the American Bridge Company?

A. Yes.

Q. Can you name from your recollection some of the fabricating plants that come to your mind that have increased their capacity and output since 1900?

A. Yes, I think so. Starting in the East, Megquier & Jones, Portland, have increased their capacity. The New England Structural Company at East Everett, Mass., have increased. You do not care for the new plants?

Q. I want you to name first those that occur to you that were in business then that have increased their capacity and output, and later on I will ask you to give me such as you recall from memory as having gone into business since that time.

A. The Hay Foundry & Iron Company at Newark; Hinkel Iron Works, New York; Hedden Steel Construction Company.

Q. The Hay Foundry is a company that has increased its plant since that time?

A. Built a new plant.

Q. Was it in business before that time?

A. It was in business before that time, but it has built a new plant, so I call it an increase, because its new plant is very much greater than the old.

Q. How is their new plant, is it a large or a small plant?

A. I should call it a very large plant for structural business; it has a capacity of about 40,000 tons a year.

Q. What is the next one?

A. Hinkel, in New York. The Hedden plant is in Elizabeth, but they do business out of Newark.

Q. The Hedden plant?

A. Yes.

Q. What line of business are they in?

A. Structural work, building work.

Q. Have they increased?

A. They now have a very large plant.

Q. Is that a new plant or an enlargement of the old plant?

A. Well, they built a new plant and then dismantled the old. They were in business, but they have simply enlarged.

Levering & Garrigues have a large plant. That is located at Dunellen; they had a small plant in New York in 1900. They now have a plant of about 30,000 tons a year.

Q. What kind of work do they do?

A. Building work.

Q. Structural work?

A. Structural work.

Q. Are they an active concern?

A. Very.

Q. They have been in business continuously since 1900, have they?

A. Yes. When you get down to Philadelphia, there is the Belmont Iron Works. They had an old plant in Philadelphia and they enlarged that somewhat, and then built a new plant at Eddystone, which is outside of Philadelphia. Both plants are now being run.

Q. What kind of work do they do?

A. Buildings and bridges.

Q. Is it an active concern or otherwise?

A. A very active concern. All of these are very active concerns.

Q. Where is their market?

A. Their market is all through the East and New England and New York.

Q. I did not ask you where Levering & Garrigues' market is.

A. Levering & Garrigues run through New York City. They go to Philadelphia occasionally, and they go into New England occasionally, but if they can get work enough in New York City and Newark, the metropolitan district, they confine their activities to that district.

Q. How about the Hay Foundry & Iron Works?

A. The same is true of Hay.

Q. And the Hedden?

A. The same is true of Hedden. They occasionally go outside of the metropolitan district, but do not generally. Levering & Garrigues have taken work on the Pacific Coast. Hay has had a job in Albany. I have omitted Milliken Brothers in New York. In 1900 their plant was in Brooklyn. Since then they have built a large plant—that is a new plant, though, so I will leave that until we get to the new plants.

McClintic-Marshall have increased the Pottstown plant which they purchased of the old Cofrode & Saylor plant. What was known as the old Philadelphia Bridge Works. That has been increased as to capacity. They do railroad and structural work, and the market is any place that they can reach from there. And there is also Dietrich Brothers in Baltimore.

Q. Let me ask: Have McClintic-Marshall built any new plant in addition to enlarging their old plant?

A. Yes, they built a large new plant at Rankin, just outside of Pittsburgh on the Monongahela River, and they also purchased a plant at Carnegie.

Q. Where is that?

A. It is near Pittsburgh. As I recall it that is the old plant of the Columbia Bridge Company, which went out of business.

Q. What kind of work do they do?

A. They do a general line of work, both bridge and structural.

Q. Of course Mr. Marshall covered that pretty fully, so we do not need to go into that. Can you name some more?

A. I think I mentioned Dietrich Brothers in Baltimore.

Q. What about them?

A. They have enlarged their plant and do structural work.

Q. Is that a large or a small concern?

A. I suppose they could turn out 12,000 to 15,000 tons a year.

The Pennsylvania Steel Company has enlarged its plant very materially. It is really a new plant built practically on the site of the old one. They now have a capacity of about 85,000 tons a year, I should say. They do heavy bridge and structural work. They do bridge work when they can get it, and only take structural work when they cannot get sufficient bridge work. That is, the heaviest type of bridge work.

Q. Where is their market?

A. Their market is a very general one, all over the country.

The Phoenix has not really enlarged, but at the time they took the Quebec Bridge contract they revamped their shop so as to give it a slightly greater capacity and bring it a little nearer up to date. The shop buildings are about the same

In Pittsburgh Jones & Laughlin—well, that is a new shop.

Fort Pitt has enlarged. They are at South Cannonsburg, Pennsylvania, near Pittsburgh. They now have a very up-to-date plant and are building railroad and highway bridges.

The Penn Bridge Company has enlarged its old plant and built a new one a few miles from the old one, which is at Beaver Falls. I think the name of the town where their new plant is located is Claysville, but it is very near Beaver Falls. They do highway work and structural work.

Riter-Conley have practically abandoned, I believe, their old plant at Allegheny, and consolidated it with their new plant at Leetsdale, which is about thirteen miles down the Ohio River from Pittsburgh. They have a large plant there.

Q. Are they in various kinds of structural work?

A. Oh, yes. They do plate work, such as tanks, pipes, towers, bridge work, building work, and cover a very wide range.

Q. Is their market general or otherwise?

A. Their market is general.

Noelke-Richards at Indianapolis have enlarged their own

old plant. They have also purchased the plant of Brown-Ketchum, located at Indianapolis, as well as the Brown-Ketchum plant located at Greenburg, near Pittsburgh, and are now operating all three plants.

Q. Is that a large or a small concern?

A. It is a large concern. They are very active all through the East and West and South.

Q. In what line of business?

A. Largely structural work; almost exclusively.

In Chicago and near there there are a number of new plants and some that are old that have been enlarged. I am trying to think of the enlarged ones.

Q. I do not care whether you speak of the enlarged ones or the new ones, if you know of any. State about when they were erected, if you can?

A. J. T. Ryerson & Son Company have a new plant, built since 1900, quite a large, active concern, run in connection with their warehouse business.

Q. What class of work do Ryerson & Son do?

A. Structural work.

Q. Where is their market generally?

A. Their market is Chicago and any point east, south and west of there, and north. They do not come very far east on account of the freight rates.

The Morava Construction Company, of Chicago, have a new plant. They do structural work.

Q. If any that you speak of as new plants were constructed since 1911, I wish you would so state.

A. Well, all right.

Q. Otherwise it is sufficient for you to state whether they have been built since 1900.

You did not finish your statement in regard to the Morava Construction Company. What kind of work do they do?

A. Structural work.

Q. Where is their market?

A. Chicago and North and West.

A. Bolter & Sons, Chicago; structural work. That is a fair sized plant.

Q. Where is their market?

A. The same as Morava.

George W. Jackson, Incorporated. They built a new plant. Since 1911 that company has gone out of business, and is now operated under the name of the Chicago Steel Products Company, a very large plant. They do structural and bridge work.

Q. You spoke of them this morning?

A. Yes, sir.

Q. The plant has not gone out of business?

A. No; the plant is the same plant, but George W. Jackson built the plant since 1900.

Q. What class of work did they do?

A. Bridge and structural.

Q. Is it a large and active plant, or otherwise?

A. Very large and active.

Q. Where is their market?

A. Chicago, west and south and north. The South Halsted Street Iron Works; structural work; a fair sized plant.

Q. When was that built?

A. I don't know when that shop was built.

Q. Was it since 1900?

A. They were in business before 1900, but whether this plant that they now operate was built since 1900 or not I cannot tell you.

Q. Where is their market?

A. It is the same as the others; Chicago, generally.

The Vierling Steel Company. That used to be Vierling & McDowell.

Q. Where are they located?

A. Chicago. It was known as Vierling & McDowell until a few years ago They have a local market for structural work.

In Milwaukee there is the Milwaukee Bridge Company and the Wisconsin Bridge Company. They are both new to me since 1900, although one of them—I think it is the Wisconsin Bridge Company, was in business prior to 1900. They have both enlarged very much since 1900. They build railroad work and structural work and bridge work generally.

Q. Where is their market?

A. Their market is a very general one. They go as far west as Denver, out into the mountains, north and south, and take work in what we know as the Southern Atlantic States. At least they have done so.

There is the Modern Structural Steel Company at Waukesha. They have a good sized plant, and specialize in structural work. Their market extends through to the Pacific Coast.

The Worden Allen Company of Milwaukee; a structural plant, of good size. They have a market all through the West. The same people are interested in the Lackawanna Bridge Company at Buffalo, which is a new plant. There are quite a few new plants.

Q. The Lackawanna Bridge Company at Buffalo?

A. At Buffalo; yes, sir.

Q. When was that plant built?

A. Oh, I should say that was put up about six or eight years ago.

Q. How long ago?

A. Six or eight years ago.

Q. Is that a large plant or otherwise?

A. Quite a large plant.

Q. What class of work do they do at those two plants?

A. The Lackawanna Bridge Company has a wider range of work it competes for than does the Worden Allen. The Worden Allen does mostly buildings, although they have built bridge work. They can do either, of course, but the Lackawanna Bridge Company does both bridge and structural and competes very actively for both classes. The Minneapolis Steel & Machinery Company at Minneapolis is a new plant.

Q. What line of business?

A. They are in bridge and structural work.

Q. Is that an active concern?

A. Very active. They also have a large foundry and machine shop in connection with it.

Q. That is run by the Gillettes?

A. The Gillettes, Louis and George Gillette, who were large owners of the Gillette-Herzog Company taken over by the American Bridge Company, formed this Minneapolis Steel

& Machinery Company, and are very active at the present time in its conduct.

Q. Where is their market?

A. Their market is South and West, through to the Coast. There is Paxton & Vierling at Omaha. That is a new concern; that is the same Vierling that was in Vierling & McDowell at Chicago. They have a small plant doing structural work. Then at Argentine, Kansas, the Kansas City Structural Steel Company, quite a good sized plant which specializes on mill building work, largely mines and mills, that is, smelter plants and milling buildings for mines in the West and Southwest. In Los Angeles they have the Baker Iron Works, and the Llewellyn Iron Works, both of which were in business in 1900 and which have been enlarged and become very active concerns, the Llewellyn probably the larger of the two.

Q. What kind of work do they do?

A. Structural work, pipe.

Q. Where is their market?

A. Southern California, and any point they can reach from there. In San Francisco, Dyer Brothers have built a new plant since the fire, although they were in business prior to that time. They are really the best equipped concern in San Francisco to do general work. Next to them would come Patrick Noble, as I know him, or the Pacific Rolling Mill Company, who has a structural shop there. There is the Judson Manufacturing Company that has a rolling mill as well as a fabricating shop across the bay, in Emery, a suburb of Berkeley.

The Northwest Steel Company, at Portland, Oregon, is a new concern, grown very rapidly, quite a proposition.

Q. What line of work are they in?

A. Bridge and structural.

Q. What line of work were these concerns in San Francisco in that you have mentioned?

A. Principally structural work. Of course they can do bridge work. As I tried to say this morning they can do bridge work in a structural shop if they desire.

Q. As I understand you then the machinery and tools and

equipment for building structural work can be used for the construction of bridges?

A. Yes, sir.

Q. Now before you switched off from increased plants to new plants you got over about half the United States. Suppose you go back to the East and see if you remember any other new plants?

A. The first new plant I think of is the Berlin Construction Company at Berlin, Connecticut. They have a shop in which they build both bridge and structural work. Their market is eastern New York and some places in New Jersey and New England. They also export.

Milliken Brothers, on Staten Island. They have been in business for a good many years. Previous to about 1903 or 1904 I should say they had a plant in Brooklyn. At that time they built a shop at Staten Island, on the north shore of Staten Island. They have a large plant there, and they are doing structural work.

Q. Have they recently gone into the hands of a receiver?

A. Yes, the second time.

Q. They were not in the hands of a receiver in 1911, were they?

A. No. I think that they had been taken out of the hands of the receiver in 1911; that is my recollection now. There are some new plants there. The Bethlehem Steel Company has a new plant in connection with its mill for structural work.

Q. The Bethlehem Steel Company?

A. Yes.

Q. Is that an active competitor or otherwise?

A. Yes, sir; very active.

Q. Is there any type of construction or character of material that they are exploiting with great success?

A. They roll their material in what is called a Grey mill, and that enables them to roll beams of varying depths, varying widths and thickness of flanges. Therefore they have put on the market what I separate into three distinct classes of rolled product. One is their girder beam running up to 30 inches in depth, which has a flange of the width of approxi-

mately half the depth of the beam; that is rolled to take the place of built or riveted plate girders. The next is the so-called regular beam section, which approximates to the section rolled on the American mill, what we know as the standard mill, except that they have succeeded in rolling a beam of the same depth but about 10 per cent lighter weight. They take the metal out of the web and put it into the flange. The third class of work is their H-column section, which has a flange of the same width as the depth of the member. That takes the place of riveted columns made up of plates and angles. Of course being a rolling mill product it requires far less shop work on any of these sections save beam sections to fit it for use in structures than does the so-called standard construction where the members are made up of several pieces riveted together.

Q. In what part of the country do you meet their competition?

A. All over the country.

There is the Lehigh Structural Steel Company at Allentown, a new plant built within five years, I should say, and there is the Guerber Engineering Company; that is an old plant.

Q. What kind of work does the Lehigh Structural Company do?

A. Structural work, building work.

Q. Where is their market?

A. Philadelphia and New York and points adjacent thereto. There is the Vanderstucken-Ewing Company at Bethlehem, a new concern; structural work, not very large.

Q. Where is their market?

A. Well, they never get beyond New York and Philadelphia.

Q. Are the Eastern Steel Company engaged in this kind of work?

A. Yes, the Eastern Steel Company have a plant in connection with their rolling mill. That was started up—it is an old plant, but started up under the name of the Eastern Steel Company when Mr. Preston took that concern along about 1903 or 1904, I should say. They are at Pottsville.

Q. Are they a large or a small concern?

A. They have a capacity of about 1,000 tons a month.

Q. What class of work?

A. Structural work.

Q. Where is their market?

A. New England, New York, Philadelphia, Baltimore and Washington.

Q. Are they active people?

A. Very active.

Q. What company was Mr. Preston formerly connected with?

A. Mr. Preston was, I believe, third vice-president of the Steel Corporation.

Lauer & Harper, in Baltimore, a new concern; they have a capacity of some 6,000 tons of structural work.

Then there is Barber & Ross, of Washington. They have increased their capacity. I did not know of them at all in 1900, so I do not know whether they were in business or not.

Q. How long ago did you first know of them?

A. I have known of Barber & Ross certainly for ten years.

Q. What class of work do they do?

A. Structural work.

Q. What does the Baltimore concern do that you mentioned?

A. Lauer & Harper?

Q. Yes.

A. Structural work.

Q. Do they do any bridge work or all structural?

A. They have done some bridge work at times.

Q. Where is their market, and where is the market of the Washington concern, Barber & Ross?

A. Practically Washington and Baltimore and nearby towns.

The Chesapeake Iron Works at Baltimore, they do structural work. They are not very active, although they have quite a capacity.

The Cambria Steel Company have enlarged, built a new shop, in fact, since 1900, at Johnstown.

Q. Where is their market?

A. Their market is anywhere they choose to go.

Q. That is a very general statement.

A. Everywhere.

Q. All over the country?

A. All over the United States.

Q. What do they make?

A. Structural work particularly, but they have taken a few girder bridges.

Jones & Laughlin have a new plant at Pittsburgh.

Q. Large or small?

A. They are good for 50,000 tons a year.

Q. What line of work?

A. Structural work. They have done some bridge work.

Q. Where is their market?

A. Everywhere; generally.

There is the Virginia Bridge & Iron Company, of Roanoke, Virginia. They have quite a large plant. They were in business in Roanoke prior to 1900, but they have a very much enlarged plant, and they have a capacity of about 30,000 tons there now. In the same shop they also fabricate steel car bodies and probably turn out an equal tonnage of those. They also have a branch plant at Atlanta. No, it was first established at Atlanta, but in the last few years they have built a new plant at East Point, Georgia, of about 6,000 tons capacity, and they also have a branch at Memphis, Tennessee, of about the same capacity.

There is also the Roanoke Bridge Company of Roanoke.

Q. What branches of work does this Virginia Bridge & Iron Company do?

A. Railroad, highway and structural work.

Q. At all of their different plants?

A. No, I would say that at the Georgia and Tennessee plants they do nothing but structural work, except they might build some highway bridges.

Q. They do the railroad work at Roanoke?

A. They do the railroad work at Roanoke.

Q. Where is their trade?

A. Their trade is East and South. They cannot get very far because of the freight.

Q. Is it an active concern in its territory?

A. Very active.

The Louisville Bridge & Iron Company. Well, that is an old concern. I do not think they have enlarged any. At Louisville, Kentucky. They were in business in 1900.

T. H. Brooks & Company, of Cleveland, structural plant, a very active concern, has a capacity of 6,000 tons, building work. Their market is largely in Cleveland.

There is the McMyler Interstate Company, of Bedford, Ohio, I think they call it. Their office is in Cleveland, but their plant is at Bedford.

Q. What about that new plant you spoke of?

A. McMyler Interstate?

Q. Yes.

A. Well, they have a very diversified product. Their competition with us is on structural work and bridge work, but not much. In addition to that they make unloading apparatus and locomotive cranes and work of that character.

There is the Van Dorn Iron Works Company. They have enlarged their old plant.

Q. Where are they located?

A. Cleveland; structural work.

Toledo Bridge & Crane Company, at Toledo, railroad bridges are their specialty. They also do structural work all through Ohio.

Q. Is that a large and active concern or otherwise?

A. Yes; it is very active. It is not so very large, but it is very active, I should say.

The Toledo Bridge & Crane Company have a capacity of about 12,000 tons.

In Detroit we have the Detroit Structural Steel Company, I believe they call it, run by Max J. L. Towler, who was some years ago manager of our Detroit plant. They do railroad, highway and structural work.

Q. How long ago did he establish his plant?

A. Oh, I should say four years ago; about four years ago I should think.

Q. Is that an active concern or otherwise?

A. Quite active in that territory.

Whitehead & Kales, of Detroit, do structural work, and they contract for bridge work. Some of it they make, but the larger jobs they sublet. They are a very active concern.

The Russell Wheel & Foundry Company has enlarged since 1900.

Then there is H. B. Lewis & Company there. That is a new concern to me; that is, since 1900.

Q. In what line of business are they?

A. H. B. Lewis & Company are in the structural line, and the same is to be said of Russell Wheel & Foundry Company. There is a firm in Buffalo that I did not mention, H. C. Harrower & Company. That is not a very large concern. It does structural work.

There is also the Buffalo Structural Steel Company, which is a very large concern; very active in structural work.

Q. Are there any concerns out in St. Louis in this line of business?

A. Yes; there is Christopher & Simpson, the Stupp Iron Co. and the Union Iron Works.

Q. What is their line?

A. Structural work.

Q. Where is the market of these St. Louis concerns?

A. St. Louis and west and south of there. They might get across the river, but not far. They can go south, however, as far as Texas without any trouble, and southwest into Arkansas and west into Kansas and Colorado.

Q. Take Stupp Brothers Bridge & Iron Company. Is that a large or a small concern?

A. Well, it is a fairly large concern to be located in that territory. I do not believe it has a capacity of more than eight or nine thousand tons.

Q. Are there any concerns west of Missouri and east of California that you can think of?

A. Yes; there is a small concern by the name of Lowith Brothers, in Denver.

Q. What kind of work do they do?

A. Highway work; and they do structural work. It is a jobbing shop; anything they can get.

Silver Brothers, of Salt Lake City, do structural work. Then there is the Armourdale Foundry Company, of Armourdale, Kansas.

I mentioned the Kansas City Structural Steel Company?

Q. Yes; you mentioned them.

What does this Armourdale concern do?

A. They have a foundry and they also do structural work in connection with it.

Up in St. Paul there is the St. Paul foundry, quite a large, active concern, that does structural work.

Q. Has that increased its capacity?

A. That has increased, and is growing steadily.

Herzog Iron Company, I think, is in St. Paul, and is not a very big concern.

Q. What kind of work do they do?

A. They have a foundry; and they also do structural work in connection with store fronts, and buildings of that sort.

There is the Crown Iron Works, I think, located at Minneapolis.

Q. The Crown?

A. Yes; the Crown Iron Works.

Then I think there is the Clyde Iron Works in Duluth. I think that is about as far north as I know anybody.

Q. That is about as far north as you can get, unless you go into Canada.

A. They are, for that territory, a pretty good sized concern, in structural work.

Q. Did you mention Payne Brothers of Newark.

A. No, I did not. That is a new concern.

Q. How about them?

A. Payne Brothers were selling people for the Berlin Construction Company until about six years ago, when they established a plant at Newark.

Q. For what sort of work?

A. Structural work.

Q. Is that an active or an inactive concern?

A. It is a very active concern.

Q. Where is their territory?

A. In New Jersey. They do not get outside of the state, as far as I have any knowledge.

Q. Do you know anything of a concern at Boonton, New Jersey?

A. Yes; Alfred E. Norton Company are up there.

The Ryersons are associated with them.

Q. What sort of work do they do?

A. Structural work in New York City and New Jersey. Mr. Norton started in business as a contractor for erecting and took that small shop.

Q. Do you know a concern out in Mt. Vernon, Ohio?

A. Mt. Vernon Bridge Company.

Q. What is their line of business?

A. Railroad and highway bridges. They are quite active.

Q. Is that a small or a large concern?

A. We meet them in competition for railroad work very frequently. They do a good deal of Baltimore & Ohio work.

Q. Do you know of any concern over in Jersey City that Mr. Lindabury sees when he comes in on the train?

A. I don't know what train he uses.

Q. On the Lackawanna.

A. Not Jersey City; that is Hoboken. There is the Fagan Iron Works over there in Hoboken.

Q. What do they do?

A. Structural work, in Jersey City and Hoboken, and around.

Q. Do you know any concern in Jersey City?

A. Oh, yes; two or three in Jersey City.

Q. What are they?

A. Snare & Triest Company have a plant over there; and there is the Communipaw Steel Company, it used to be known as the Metropolitan Bridge Company, quite a good sized concern.

Q. What class of work do those two concerns do?

A. They do structural work.

Q. Where is their market?

A. In New York, the Metropolitan District, Jersey City.

Q. Do you know a concern anywhere named John Eichleay, Jr., & Company?

A. They are in Pittsburgh.

Q. What is their business?

A. Structural work; they have done some bridge work, but not much.

Q. Is that a small or a good sized concern?

A. That is a small sized concern; it used to be; it is growing slightly. I should say it had a capacity of about 10,000 or 12,000 tons now.

Q. Where did they market their product?

A. They have gone as far as California with it.

Q. Do you know of any concern in Richmond, Virginia?

A. The Richmond Pattern & Structural Iron Works, about a 3,000 ton concern.

Q. What is their business?

A. They do structural work generally; they built one or two small bridges, not much; mostly structural.

Q. I think when I interrupted you at the time you were testifying about the Virginia Bridge & Iron Company at Roanoke, you started to say something about another company and I interrupted you to ask about the character of the work. Do you remember what company that was?

A. No, I do not.

Q. You had started to speak of another company, and I interrupted you.

A. I said they had two branch companies.

Q. Yes; then you started to say something about some other company.

A. I mentioned another company there, the Roanoke Bridge Company at Roanoke.

Q. Did you mention that?

A. I had mentioned that; at least, that is my recollection. If I did not, I will now. They do largely highway work, although they do some structural work.

Q. Do you know a concern anywhere named Hansell-Elcock?

A. They are in Chicago.

Q. What is their business?

A. Structural work.

Q. Is that a large or a small concern?

A. That is a good sized concern. I should not be surprised if they had a capacity of 20,000 tons a year.

Q. They do structural work?

A. Structural work.

Q. Where is their market?

A. Chicago and adjacent territory.

Q. Do you know a concern called the Vierling Steel Company?

A. Yes, that was Vierling & McDowell.

Q. That was the one you spoke of, was it?

A. Yes, the Vierling Steel Works.

Q. Do you know any more concerns competitive with your company in these various lines that have increased their capacity or erected new plants since 1900. If so, you are at liberty to state them?

A. I cannot offhand. I probably could think of fifteen or twenty others if I had time.

Q. Are or are not the various companies that you have named, and were or were they not in 1911 competitors of the American Bridge Company in their different lines?

A. Yes, they were.

Q. Mr. Davis, what competitive concerns are there, I mean concerns competitive with the American Bridge Company, that in 1911 had rolling mills in connection with their plants, if any?

A. The Passaic Steel Company at Paterson; there is the Eastern Steel Company, Pottsville. The Phoenix Bridge Company at Phoenixville. There is the Cambria Steel Company at Johnstown. Jones & Laughlin at Pittsburgh; Lackawanna Steel Company, Buffalo. The Judson Manufacturing Company out in California. They roll beams up to ten inches, small angles up to about three inches or three and a half inches. They roll a certain range of plates, not many, very narrow. That is all I recall now.

Q. Just for a matter of information, is the Inland Steel Company in the structural trade at all?

A. They have no fabricating shops, so far as I know. There are a number of mills without fabricating shops.

Q. Has there been a change in the character of structures or the size of structures built of steel since prior to the date of the organization of the American Bridge Company, which has made necessary any changes in the character of the shops or organizations necessary to put them up?

A. Organization necessary to put up what, the shops or the structures?

Q. To put up the structures. Do you understand my question?

A. I will see if my answer fits it.

Q. I am asking you with reference to the size of the structures to be built and not the organizations and shops necessary to build them—if that has made any change?

A. The structures have increased in size and will probably continue so to do. The work in some instances has grown to the point where it is necessary to remodel and reconstruct, or even rebuild the shops in order to properly handle the work. So far as the organization is concerned we have not been compelled to make any change in our organization.

Q. That is, in the nature of them. Has there been any change in the size of them?

A. We are handling it with the same people.

Q. Are you, with the same force?

A. Yes.

Q. Is there any difference in the time in which a large structure, such as the Woolworth Building, or the Queensboro Bridge, can be turned out, and the time that would have been required to turn it out in 1900 with the shops as they then existed?

A. In 1900 no single shop could have turned out the Woolworth Building in the time in which it was turned out.

Q. Is the matter of time of delivery of any importance in taking structural contracts, or erecting structural work?

A. It is constantly becoming of greater importance.

Q. You have stated that the bulk of the business of the American Bridge Company is taken upon competitive bids. Under the same conditions, I mean as to the responsibility of the purchaser or the character of the work, or the time of

delivery, etc., does the American Bridge Company make different bids, or do they bid the same amount for similar jobs?

A. You mean——?

Q. Where conditions are similar.

A. You mean where we are bidding to two or more persons on the same work under precisely similar conditions?

MR. SEVERANCE: That is right.

MR. DICKINSON: You mean at the same time?

THE WITNESS: That would be under the conditions. We would make the same price.

By MR. SEVERANCE:

Q. Now, what reasons are there to cause you, if you do, to make different prices at the same time on work of similar character?

A. Well, it would have to be on the same work, because no two jobs are alike. If it is the same job we frequently bid different prices to different people.

Q. What would be the reason? That is what I want to know?

A. Conditions are not alike. One man might wish different terms.

Q. What do you mean by different terms?

A. Well, he might not care to pay us cash at thirty days on shipments, which are our regular terms. He might wish us to take monthly payments of a fractional portion of our invoice value, and the balance on completion, or he might wish us to take the money as and when he received it. That would of course vary the price, because it puts us into the banking business. Then another man might wish to make his own shop detail drawings; another man might choose to carry the charge for mill and shop inspection; another man might instruct us to change the specifications; still another man might say, "Here, you may change these plans in such and such a particular," changing the character of the work. There might be a number of reasons. Those are some that I happen to think of. Here is another one. A man might insist upon a penalty clause.

Q. For failure to deliver on time?

A. Failure to deliver. That of course puts us in the insurance business, as well as in the fabricating.

(Here a table was marked "Defendants' Exhibit (Davis) No. 92.")

By Mr. Severance:

Q. There has been some evidence in the record of certain contracts made with the Harriman Lines, so-called, by the American Bridge Company; I mean the Union and Southern Pacific organizations, covering certain of their requirements for fabricated steel work. Do you know about those contracts?

A. I do.

Q. Do you recall the time? I am not asking for a date, but do you recall the occasion of the making of the first one of those contracts?

A. Yes.

Q. Was that contract secured without competition or with competition?

A. With competition.

Q. I show you Exhibit 92, which is headed "Sales in tons per annum," and four columns headed respectively "year, total sales, Harriman orders, per cent. of Harriman orders." That was made up under your direction?

Mr. Dickinson: What does that mean, that the orders that went to Harriman give a percentage of the whole?

Mr. Severance: I will ask him a question to develop that.

Mr. Dickinson: You mean that is the per cent. of the whole of their work, is it?

Mr. Severance: Yes.

Mr. Dickinson: Well, that is what I would suppose.

Mr. Severance: But I will have him explain that.

The Witness: This was prepared at my request in the auditor's office at Pittsburgh.

By Mr. Severance:

Q. Which column was prepared in the auditor's office and which one in your office, if any?

A. It was all prepared in the auditor's office, but I checked the column headed "Harriman orders" with my own records and found that they substantially agreed.

Q. Do you know enough about the business of the company to state in detail the total tonnage of each year's contracts, whether it is substantially correct as it appears there? I do not expect you to remember accurately?

A. I think I can say yes to that.

Q. That it is substantially right for these various years?

A. Yes.

Q. In response to questions of counsel, what is the column that is headed "Per cent. of Harriman orders," what does that mean?

A. That means that the Harriman orders bore that percentage, or were that percentage of the total sales for the year indicated?

Q. Of the American Bridge Company?

A. Of the American Bridge Company.

Q. And these Harriman orders, so-called, covered the material sold under the contracts that I showed you, which have been introduced in evidence? I showed you Government exhibits.

A. Yes, I saw parts of two contracts.

Q. That is right. Under those or subsequent contracts of the same character?

A. Yes; I do not know the dates of those contracts.

MR. COLTON: The first contract was dated 1904. I do not know whether this begins 1905.

THE WITNESS: My recollection is, I am speaking from memory, the first contract was made about the last month in the year 1904, but I may be in error as to that.

MR. SEVERANCE: I think that is right. This is the first entire year, I think, under that contract.

I offer this in evidence.

(The paper referred to was thereupon marked "Defendants' Exhibit (Davis) No. 92, June 22, 1913," and will be found in the volume of exhibits.)

MR. SEVERANCE: Do you care to have him enlarge on that further?

MR. COLTON: No, we may cross-examine on that.

MR. SEVERANCE: He has stated that he checked only the one column that is his own figures, but he says he thinks the statement is substantially correct. I did not ask him whether he knew it was absolutely correct or not.

Q. This morning I asked you as to the percentage of the highway bridges in the country built by the American Bridge Company in 1900. I neglected to ask you whether you could give an estimate of the percentage of the railway bridges of the country built by the American Bridge Company in 1900.

A. I should say we had more than half.

Q. About how much more than half, should you say?

A. I think we did fully 60 per cent of the railroad bridge work.

Q. How was it in 1911? Give us your best estimate as to that.

A. I could not answer that question offhand. I should have to look up the figures.

Q. You would not answer that offhand?

A. No; not without looking up the figures.

Q. Can you state, without looking up the figures, as to whether that percentage has increased during that period?

A. I do not think it has increased.

Q. But you would have to look up the figures in order to state definitely?

A. I would have to look up the figures; but I think we did a larger percentage of the railroad bridge work in 1900 than we did in 1911.

Q. Mr. Foster Milliken was called as a witness on behalf of the complainant in this case and testified, at pages 1640 and 1641 with reference to the capacity of the various subsidiaries of the American Bridge Company in 1900 in heavy tonnage work, as he calls it. He testified as follows; speaking of Post & McCord:

"Q. I want the concrete figures now. What was their capacity for turning out heavy work in 1900? What was their tonnage capacity for heavy work?

"A. May I consult my memorandum that I made the other day?

"Q. Oh, yes. Consult it, certainly.
"A. I figured out, approximately, 28,800 tons.
"Q. And the Pencoyd Company?
"A. Approximately 48,000 tons.
"Q. And the Union?
"A. 22,400 tons.
"Q. And the Trenton?
"A. 22,400 tons.
"Q. And the Lassig?
"A. 22,400 tons.
"Q. And Rochester?
"A. 22,400 tons.
"Q. Edge Moor?
"A. 35,200 tons.
"Q. Elmira?
"A. 35,200 tons.
"Q. Pittsburgh?
"A. 32,000 tons.
"Q. Shiffler?
"A. 28,800 tons.
"Q. Keystone?
"A. 22,410 tons."

Those were stated by Mr. Milliken as the capacities of these various plants for turning out heavy work in 1900. I would like you to give your opinion on the same subject, if you will.

MR. COLTON: I object to counsel reading what another witness has said on this subject as improper examination.

MR. SEVERANCE: You may look at the testimony there (handing book to witness).

MR. COLTON: I further object to the witness being shown the testimony of a previous witness and having his opinion asked thereon, as improper examination.

MR. SEVERANCE: What difference does it make whether the book is shown him or whether I read what there is in the book to him?

MR. COLTON: It is all the same thing; they are both equally objectionable, for the same reason.

THE WITNESS: I do not think I need this.

MR. SEVERANCE: The witness says he does not need the book; so I suppose the objection may be considered as withdrawn.

MR. DICKINSON: No; you have already shown the book to him.

By MR. SEVERANCE:

Q. You may state your opinion of the capacity at that time for turning out heavy work. Shall I read this any further to you?

A. Any way.

Q. Post & McCord?

A. 24,000 tons.

Q. That is heavy work?

A. I do not know what he means by "heavy work," so I cannot say, but that is about what the plant is capable of turning out of the character of the work it performed.

Q. What kind of work did it perform?

A. Structural work; principally office, loft buildings, hotels, work of that character, as I have explained.

Q. Pencoyd Company?

A. The Pencoyd had a capacity of about 65,000 tons.

Q. Of the character of work you have described?

A. Yes.

Q. The Union?

A. The Union I should say have a capacity of 17,000 tons.

Q. Trenton?

A. About 24,000 tons.

Q. Lassig?

A. The Lassig was good for 3,500 tons a month; that is 42,000 a year anyway, maybe 45,000 tons; I don't know.

Q. Rochester?

A. Rochester would do about 8,000 tons.

Q. About 8,000?

A. Yes, that including the pipe plant.

Q. Then you do not agree with Mr. Milliken that Lassig and Rochester were the same size?

A. I certainly do not, not if he said that.

Q. Edge Moor?

A. Edge Moor about 25,000.

Q. Elmira?

A. Elmira about 24,000.

Q. Pittsburgh?

A. Pittsburgh about 12,000.

Q. Shiffler?

A. Shiffler I should rate at 3,000 tons a month; about 36,000 or 37,000 tons.

Q. Then you do not agree with Mr. Milliken that Pittsburgh had a bigger capacity than Shiffler?

A. No, sir.

Q. Keystone?

A. Keystone was about the same size as Lassig, 42,000 to 45,000.

Q. In each case you have given that as to the character of work that was ordinarily turned out by those plants, have you?

A. Yes.

Q. Did all of these companies that I have just mentioned turn out heavy structural work at that time?

A. No, they did not; Pittsburgh did not. I think you mentioned that.

Q. Yes, Pittsburgh is one. Did Rochester?

A. Rochester did fairly heavy bridge work, and then it had a pipe plant. It did no structural work at all. Edge Moor, as I have said, did practically no structural work. It could do structural work.

Q. It did heavy bridge work, though?

A. It did heavy bridge work; they were interchangeable.

Q. Did the others do either heavy bridge or heavy structural work, the others aside from Pittsburgh and Rochester? I will read them over to you: Post & McCord, Pencoyd, Union, Trenton, Lassig, Edge Moor, Elmira, Shiffler, Keystone?

A. Shiffler was the only one that did not do very much; they could not do a great deal of heavy structural work.

Q. Or heavy bridge work?

A. Or heavy bridge work. They could do it; they could probably turn out at least 30,000 tons, I should think, a year.

Q. Of what?

A. Of heavy work.

Q. And was the balance of the tonnage they turned out other than heavy work?

A. Light work, of course. If a man could pick the work for the shop, Shiffler could turn out 50,000 tons of certain classes of work, but they never got that to do. It was not in the market; it was not available, so what I say was the capacity for the class of work that they were equipped to handle.

CROSS EXAMINATION

By Mr. Colton:

Q. Mr. Davis, from your own recollection as of the year 1900, what would you state the capacity of the Phoenix Iron Company to be, using the same basis for your statement of capacity that you use in stating the capacity of the Union Bridge Company?

A. You wish to eliminate the Phoenix Iron Company, do you?

Q. No. I asked for the Phoenix Iron Company.

A. Then you eliminate the Phoenix Bridge Company?

Q. Yes.

A. It would be very hard to divorce them, as a portion of the work for each was done in the same shop.

Q. Take them both together, then.

A. They have a very much greater capacity than the Union Bridge Company.

Q. At that time nearly twice as much?

A. Fully that; more, I should say.

Q. Was not the Phoenix Iron Company and the Phoenix Bridge Company, from the point of view of actual output and capacity of output in 1900, rather run down?

A. Not according to Mr. Dean.

Q. Now, then, according to your own recollection; I am not speaking of Mr. Dean's recollection.

A. I talked with him a number of times about it, eve since I have known him.

Q. You refer to conversations with Mr. Dean, then, in estimating the capacity of his works?

A. Oh, surely; to quite a considerable degree. He knows what he has turned out at that shop, and I am perfectly willing to accept his statement. If he says he has turned out so many thousand tons, I believe him.

Q. Did he ever say that he turned out 56,000 tons in the year 1900?

A. I do not recall that he did, but I know that he has told me since the Bridge Company was formed that they could get out 50,000 tons a year without any trouble.

Q. Now, if you rate Phoenix, those two companies, the Phoenix Iron Company and the Phoenix Bridge Company, at 56,000 tons, don't you think that at the same time, if you are going to use the same system of comparison, that you should rate the Union Bridge Company at 36,000 tons?

A. No, I do not.

Q. At what would you rate it if you were going to use the same basis of comparison?

A. That statement that you have given of the capacity of Phoenix is taken from Swank.

Q. Yes, I know; I am trying to get at whether these things are comparable or not.

A. The Union Bridge Company—I also know what it has actually done.

Q. Then in one case you used the statement from Swank and in the other case you used a different system for making up the capacities?

A. Yes.

Q. And you have put them on a comparable basis?

A. I would not increase Union's capacity at all.

Q. You would not increase Union's capacity at all?

A. No, sir.

Q. But if you had them on a comparable basis you would put the two Phoenixes better?

A. I should say 50,000 tons.

Q. That is, you would cut off 6,000 from what you have on Exhibit 89?

A. I am not responsible for that capacity that is on the exhibit.

Q. Now, if you used, instead of using your own estimates

of capacity, the estimates usually used in the trade, would not the Schultz Iron Company be rated at 10,800 tons instead of 7,000 tons?

MR. SEVERANCE: I object to that on the ground that it assumes that the witness has not made his estimates on the same basis as usually used in the trade. No such thing appears. I call the attention of the witness to this statement in the question.

MR. COLTON: You may make any explanation in your answer that you like.

THE WITNESS: In the preparation of that table of capacities in our own plants, I honestly tried to give the capacities as I would rate them. Now, it is possible that in some plants the rating is high. In others it might be a trifle low. It would not vary a great deal. It would depend largely on the character of work they might have in the shop. I gave an illustration, that about efficiency and organization. We have taken the Pencoyd plant, the same plant that we took over at the 65,000 ton rating, and we can turn out vastly more than that to-day by picking our work and specializing. As I tried to explain to you this morning; we would put certain characters of work in certain plants. That plant has not been changed at all. In fact certain of the departments have been taken away from there and in spite of that we have increased its capacity.

Q. That is, it has a greater capacity than 65,000 tons?

A. It has to-day, yes.

Q. Did it have a greater capacity in 1900, when it was taken over, than 65,000 tons?

A. No, sir; that is the very best it could do.

Q. Taking out the companies that exceed 15,000 tons on Defendants' Exhibit 90, I wish you would state whether those companies engaged chiefly in heavy structural or heavy bridge work? Post & McCord?

A. I would call that structural work, yes, of the character I have described; I would call it heavy work, yes.

Q. I am now speaking of heavy structural and heavy bridge. Is your answer yes to that?

A. Yes, sir.

Q. Union Bridge Company?

A. A portion of its capacity only was occupied in heavy work.

Q. Do you know as of 1900 what proportion was heavy?

A. I should call it at least two-thirds.

Q. The New Jersey Iron & Steel Company?

A. Yes; they did mostly heavy work.

Q. A. & P. Roberts Company?

A. That is heavy work.

Q. The Edge Moor Bridge Company?

A. Heavy work.

Q. Shiffler Bridge Company?

A. As I have explained here, it did some heavy, but mostly light work.

Q. Mostly light work of what character?

A. Mill buildings.

Q. The Keystone Bridge plant?

A. Heavy work.

Q. What proportion of Shiffler was heavy?

A. I do not think in 1900 more than 20 per cent. of it was heavy.

Q. Do you know as to the condition of that company, what sort of work it was doing in 1899, before it was taken over?

A. In 1899?

Q. Yes.

A. I know from competition, I met them on a great many jobs of mill building work without exception.

Q. That is where you met them or came into contact with them?

A. Yes.

Q. You were representing a rather small concern at that time, were you not, comparatively?

A. It was small; yes, sir.

Q. The Berlin Iron Bridge Company?

A. The Berlin Iron Bridge Company was very active.

Q. The Detroit Bridge & Iron Works?

A. I should call that heavy.

Q. The American Bridge Works?

A. I should call that heavy.

Q. Lassig Bridge & Iron Works?

A. Heavy work.

Q. Did I ask you in regard to the Elmira Bridge Company?

A. I believe not.

Q. Will you give that?

A. They did heavy work when they could get it.

Q. What percentage of heavy work?

A. I should say in 1900 that three-quarters of it was heavy work.

Q. Those companies that had less than 15,000 capacity, as a general rule did much lighter work than the companies we have just named, that went into the American Bridge Company, did they not?

A. Yes; but the line is not clearly defined.

For example, the Hilton and Rochester companies did just as heavy work as most of those shops that you have enumerated.

Q. Rochester did heavy work?

A. Heavy bridge work.

Q. What percentage of the Rochester plant's work was heavy work?

A. All of it.

Q. All of the Rochester's work was heavy work?

A. Yes.

Q. What percentage of the Hilton Company's was heavy?

A. The same reply.

Q. Did you not testify this morning that the Hilton Company did some highway work?

A. Surely; large highway work. I should classify that as heavy work. These companies, you know, might all have had light work at some time, but if the majority of the work was heavy work, I would classify them as heavy shops.

Q. The Berlin Iron Bridge Company; what class of work did they do?

A. I should say in 1900 we had railroad work, highway work, heavy building work; but the majority of the work was light building work.

Q. What percentage was heavy work for the Berlin Iron Bridge Company?

A. Fully a third.

Q. Take the J. G. Wagner Company; did that do chiefly heavy work?

A. Heavy and light both. I should say it was about evenly divided.

Q. The Koken Iron Works did almost exclusively heavy work?

A. No; I would not say so. Heavy and light.

Q. Did you not testify this morning that it did primarily heavy work?

A. When you do heavy and light work, I would classify it as heavy building work; but contained in that would be a lot of light work, for instance, floors.

Q. What percentage of that company's work was heavy work?

A. Now it gets back to the point as to what you mean by heavy work.

Q. You have been speaking of heavy bridge work and heavy structural work. I mean the same thing as you do.

A. Put it at half, then.

Q. I want to get those companies that were abandoned. I will name them off, and if you will just say whether they have been abandoned or not, that will be sufficient: Berlin Iron Bridge Company?

A. Abandoned.

Q. That was doing two-thirds light work?

A. In tonnage not over half; two-thirds in sales, yes. In weight, not. Now it is a question as to how you want to estimate it.

Q. I want to estimate it by tonnage.

A. You want to estimate it in tons?

Q. Yes.

A. About one-half, in tons.

Q. About one-half of it was light work and one-half of it heavy work?

A. Yes, sir.

Q. The Hilton Bridge & Construction Company?

A. That is abandoned.

Q. That only had a capacity of 4,800 tons, according to your estimate?

A. Yes.

Q. The Rochcester Bridge & Iron Works?

A. Abandoned.

Q. The Horseheads Bridge Company?

A. Abandoned.

Q. The Groton Manufacturing Company?

A. The Groton Bridge & Manufacturing Company?

Q. Yes.

A. That is abandoned.

Q. The Ambridge Company; that was equipped to manufacture heavy structural work and heavy bridge work?

A. Yes. We can also do light work there, and do do light work there in an auxiliary shop. We have an auxiliary shop at Ambridge.

Q. For the sake of doing light work?

A. For the sake of doing light work and beam work.

Q. But the plant was built and has been used primarily for doing heavy structural work and heavy bridge work, has it not?

A. That is right.

Q. What percentage of that plant's output has been heavy work?

A. I should say a very large portion of it is heavy work.

Q. About two-thirds or three-fourths?

A. I should think so, yes, in tonnage.

Q. About three-fourths?

A. I should think so. I would not be surprised; I am not prepared to state offhand.

Q. I understand this is approximate.

A. Purely approximate.

Q. At Elmira you have got a new plant practically, have you not?

A. Yes.

Q. What is that equipped to turn out, chiefly?

A. Heavy bridge and building work; also light bridges. We make our light bridge work there, and a good deal of light building work; a great deal.

Q. About two-thirds of its output is heavy work?

A. In tons?

Q. Yes.

A. Yes.

Q. Three-fourths?

A. Two-thirds, anyway, in tons. It is difficult to figure that in tons. It is more general when it comes to output, to figure the percentage of price that one bears to the other.

Q. I want it in tons. The A. & P. Roberts still continues to do chiefly heavy work, does it not?

A. Heavy work.

Q. Are Megquier & Jones equipped to turn out heavy work?

A. Yes.

Q. Heavy railroad work?

A. Yes; they do not do railroad work. They do building work.

Q. Were Megquier & Jones equipped to turn out heavy work in 1900?

A. Yes; just as heavy as the plant at Berlin.

Q. How as compared with Pencoyd?

A. Oh, no. They could not. They had not the cranes to lift it.

Q. Or as compared with the Elmira plant?

A. No, sir.

Q. It would not compare with that?

A. Of course if you did not care what it cost to do this work, you can do the heaviest work in any shop.

Q. I mean within economical limits?

A. To make it a commercial proposition, no. I am answering on those lines.

Q. Fletcher & Crowell: Was that equipped to turn out heavy work?

A. Why, yes, they have done some heavy column work.

Q. Heavy bridge work?

A. No; no bridge work.

Q. It could not do any bridge work of a heavy variety?

A. Oh, no.

Q. Not economically?

A. No.

Q. G. W. & F. Smith?

A. They have done some pretty fairly heavy work. They have done a lot of brewery work, and that all runs very heavy.

Q. In 1900 was that equipped to do heavy work?

A. Heavy building work, yes, sir.

Q. Was it equipped to do heavy bridge work?

A. It could do bridge work, but did not.

Q. Did it have machinery to turn out heavy railway bridges, such as were made by the Pencoyd or Elmira plants?

A. Not economically. They could have done it, yes.

Q. How about the Eastern Bolt & Nut Company?

A. The Eastern Bolt & Nut Company was a very small concern. They could not do anything heavy.

(Whereupon an adjournment was taken until tomorrow, Tuesday, June 24, 1913, at 10:30 o'clock a. m.)

EIGHTY-THIRD DAY.

EMPIRE BUILDING,
71 Broadway, New York City.
Tuesday, June 24, 1913.

Before Special Examiner JOHN ARTHUR BROWN.

Present on behalf of the United States, Mr. DICKINSON and Mr. COLTON.

Present on behalf of the Defendants, Mr. LINDABURY, Mr. SEVERANCE and Mr. BOLLING.

Mr. SEVERANCE: Through the courtesy of counsel on the other side Mr. Davis will stand aside for a few moments until I examine Mr. Hagar.

EDWARD M. HAGAR,

a witness produced on behalf of the Defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. SEVERANCE:

Q. Where do you live?

A. I live in Chicago, Illinois.

Q. What is your business?

A. President of the Universal Portland Cement Company.

Q. Is that company a subsidiary of the United States Steel Corporation?

A. It is.

Q. What is its business?

A. Manufacture of Universal Portland cement.

Q. Where are its plants?

A. At South Chicago, Illinois; Buffington, Indiana, and Universal, Pennsylvania.

Q. Where is Universal, Pennsylvania?

A. Immediately adjoining the City of Pittsburgh.

Q. Have you any other plant under construction?

A. We are constructing a plant at Duluth, Minnesota.

Q. When will that plant be completed?

A. Some time in 1914.

Q. Where is the plant located at Duluth, Minnesota, with reference to the new steel works?

A. Adjacent to the new steel works.

Q. From what material does the Universal Portland Cement Company manufacture cement?

A. From slag and limestone.

Q. From what source do you get your slag at the South Chicago Plant?

A. We get it for the South Chicago plant from the Illinois Steel Company. At Buffington we get the slag from the Buffington Works of the Illinois Steel Company and the Gary Works of the Illinois Steel Company.

Q. What is the capacity of the plants at South Chicago and Buffington?

A. The South Chicago plant has a capacity of 500,000 barrels a year. The Buffington plant, there are three separate units, an aggregate of 8,000,000 barrels a year.

Q. What is the capacity of the plant at Universal, near Pittsburgh?

A. 3,500,000 barrels per annum.

Q. How do they manufacture their cement at that place?

A. Exactly the same as at South Chicago.

Q. Where do they get the slag?

A. From the Carnegie Steel Company.

Q. Is there any other cement manufacturer in the country manufacturing cement from furnace slag?

A. No Portland cement.

Q. I mean Portland cement.

A. No other.

Q. I say, is there any other manufacturing Portland cement from furnace slag?

A. No, sir.

Q. When was the manufacture of Portland cement started by your company?

A. In May, 1900. It was not the company in May, 1900.

Q. What was the plant at that time; who controlled the plant?

A. It was a department of the Illinois Steel Company, the cement department of the Illinois Steel Company.

Q. When was the Universal Portland Cement Company organized?

A. October 1, 1906.

Q. When was the plant built at Pittsburgh or Universal?

A. Built in 1906 and 1907; started in operation in 1908.

Q. Up to the time of the organization of the Universal Portland Cement Company what corporation had conducted this manufacturing?

A. The Illinois Steel Company.

Q. That was a department of the Illinois Steel Company?

A. The cement department of the Illinois Steel Company.

Q. When was the plant built at South Chicago and Buffington? When were they built?

A. The plant at South Chicago started in operation in May, 1900. The first plant at Buffington in 1905; the second plant at Buffington, and the first half of the plant at Pittsburgh, in 1908; the second half of the plant at Pittsburgh in 1910, and the third plant at Buffington in 1912.

Q. What is the capacity of that last plant?

A. Four million barrels per annum.

Q. The third plant at Buffington?

A. The third plant at Buffington.

Q. What is your total capacity now?

A. Twelve million barrels per annum.

(Here a paper produced by Mr. Severance was marked "Defendants' Exhibit No. 93.")

By Mr. Severance:

Q. I show you Defendants' Exhibit (Hagar) No. 93, headed "Number of tons of slag used yearly in Universal Portland Cement, for a series of years from 1900 to 1912 inclusive," and a column of figures under the head of "gross tons of slag." Is that a correct statement of the gross tons of slag used by either the Illinois Steel Company when this manu-

facturing was a department of that company or by the Universal Portland Cement Company since its organization?

A. It is.

MR. SEVERANCE: I offer Exhibit No. 93 in evidence.

(The paper referred to was thereupon marked "Defendants' Exhibit (Hagar) No. 93, June 24, 1913," and will be found in the volume of exhibits.)

(Here a paper produced by Mr. Severance was marked "Defendants' Exhibit No. 94.")

By MR. SEVERANCE:

Q. I show you Defendants' Exhibit No. 94, which has a series of columns, one column of the years from 1900 to 1912 inclusive, one column headed "Production of Portland Cement of U. S. Barrels," another column "Production of Universal Portland Cement. Barrels," and another "Percentage of Universal to Total U. S. Prod." Is that a correct statement of what it purports to show?

A. It is.

Q. And from what source did you secure the total production of the United States?

A. From the annual Government report of the production of cement.

MR. SEVERANCE: I offer Exhibit No. 94 in evidence.

(The paper referred to was thereupon marked "Defendants' Exhibit (Hagar) No. 94, June 24, 1913," and will be found in the volume of exhibits.)

Q. I show you Defendants' Exhibit Hagar No. 95, headed "Universal Portland Cement Company, shipments each year, 1900 to 1912, inclusive," and a column with the number of barrels and net prices on shipment each year per barrel, and I will ask you if that is a correct statement of the net prices received per barrel and the total amount of shipments each year of this product that you have testified about?

A. It is.

Q. This is headed "Universal Portland Cement Company." As I understand you the shipments from 1900 to 1906 were by the Illinois Steel Company, were they not?

A. That is true.

Q. The statement is correct as to figures?

A. It is.

MR. SEVERANCE: I offer it in evidence.

(The paper referred to was thereupon marked "Defendants' Exhibit (Hagar) No. 95, June 24, 1913," and will be found in the volume of exhibits.)

Q. How does the production of the Universal Portland Cement Company now compare with the total production of the United States in 1900?

A. 19 per cent greater.

Q. And has the use of cement increased very largely during that period?

A. Greatly.

Q. Was there any use for this furnace slag until it was used to make cement, and if so what were the uses?

A. A very small quantity was used for ballast.

Q. Was it manufactured into anything?

A. No.

Q. Is it or is it not a waste product of the blast furnaces?

A. It was a waste product.

Q. Outside of the utilization of this waste product of the mills is there any other waste product of the mills that is utilized by you in the manufacture of cement?

A. Yes. Our plants are driven entirely by electric power generated at the steel works by the use of waste gases from the furnace in gas engines driving generators.

Q. Do the steel works that furnish this gas have sufficient gas for their own uses?

A. Yes.

Q. Outside of what they use for the cement works?

A. Yes.

Q. How does the manufacture of cement from furnace slag compare with the manufacture of cement from cement rock as to cost of burning?

A. A lower cost of burning.

Q. Why?

A. Because the slag is partially burned, therefore requir-

ing less pounds of coal as compared with the burning of the raw material.

Q. Is it a product that is ordinarily marketed within a reasonable distance of the place of manufacture or is it shipped a long distance?

A. A comparatively short distance.

Q. For what reason?

A. Because the freight is such a large proportion of the value of the product.

Q. What is ordinary Portland cement made from?

A. Made from a number of materials; in the east, cement rock and limestone, and Michigan from marle and clay, and from shale and limestone.

Q. Natural commodities?

A. Natural products.

Q. Is there any supply of the natural rock or other similar article that is used in the manufacture of Portland cement in the immediate vicinity of Chicago, where you make this cement?

A. There is not.

Q. Where is the nearest cement plant to Chicago?

A. LaSalle, Illinois.

Q. How far is that from Chicago?

A. About a hundred miles.

Q. What is the nearest point to Pittsburgh at which there is a supply of the natural material for Portland cement?

A. Newcastle and Wampum.

Q. About how far off is that?

A. Approximately a hundred miles.

Q. Is there any cement plant in the vicinity of Duluth, where you are building a new plant?

A. There is not.

Q. Where is the nearest one?

A. Mason City, Iowa.

Q. What has been done by the Universal Portland cement company in the way of increasing the uses of cement, generally?

A. We have done a great deal in the way of education and publicity. In the last two years we have spent over half a

million dollars in educational work and literature, and by lectures, and by promoting concrete roads, and especially work among the farmers, silos, corn cribs, feeding floors, and a number of uses on the farm.

Q. Is or is not cement now being used to a large extent in the construction of farm buildings?

A. To a very large extent.

Q. What building material does cement displace chiefly?

A. Largely lumber.

Q. What brand is your cement sold under?

A. Universal Portland cement.

Q. How uniform is the product that you produce at these three different locations where you are now manufacturing?

A. Perfectly uniform.

Q. How are you able to make it uniform?

A. Because we have practically the same raw materials at all points, as the clay ingredient comes from an ore which is the same at different points, and with that we use pure calcite of limestone. Then we have an opportunity in using the limestone in the blast furnaces from which we take the slag to produce a proper analysis of the slag.

Q. What advantage, if any, does the Universal Portland Cement Company possess in having plants at different locations over a concern that has a plant at only one location?

A. A very great advantage.

Q. What is it?

A. The cement business is very local and is becoming more so, and therefore the production possible at one point is limited. With a number of points of production the total output can be very much greater and therefore the overhead charges and the cost per barrel for educational work greatly reduced. It is very difficult in advertising or publicity work to confine it to a small section. Unless the company has a number of plants located in different sections a large portion is wasted.

Q. How do the districts in which your plants are located compare with other districts in the country as to consumption?

A. They are in the centers of large consumption, more so than any other company, Chicago and Pittsburgh.

Q. What, if anything, has been done by the Universal Portland Cement Company looking to a decrease in the cost of production?

A. It has been continually working on that and every successive plant, of which we have five, makes production cheaper than the previous one, so that there is a very wide range between our oldest plant and our latest plant in the cost of production.

Q. Can you state approximately the average profit that you have made on cement since you have started in this business?

A. About twenty cents a barrel.

MR. DICKINSON: This entire testimony is excepted to as irrelevant, and by agreement of counsel, with the same effect as if the exceptions had been entered to each question.

ARTHUR L. DAVIS,

a witness previously sworn on behalf of the defendants, was recalled and testified further as follows:

CROSS-EXAMINATION (Continued)

By MR. COLTON:

Q. Is this a complete list of the American Bridge Company plants that you have given on Defendants' Exhibit 90?

A. I do not recall the exhibit. May I look at it?

Q. (Handing exhibit to witness): Was it intended to be complete?

A. It was, yes.

Q. Look it over and see if you have left out something?

A. I do not see any plant omitted.

Q. Perhaps it is known by a different name. Do you know of the Toledo Bridge Works?

A. I do.

Q. Under what name is that down in this exhibit?

A. It is not there at all. It was not a part of the American Bridge Company in 1900.

Q. When was that taken in?

A. In 1901 some time; I cannot tell you when.

Q. Do you know when the contract for that company was taken?

A. I do not. It did not become a part of the American Bridge Company until 1901.

Q. How about the Nelson-Buchanan Company?

A. They never had a shop. The Pittsburgh Bridge Company is the Nelson-Buchanan Company. The Pittsburgh Bridge Company was owned by Nelson-Buchanan.

Q. And the Alabama Company that the American Bridge Company bought up; did that have a shop?

MR. SEVERANCE: What is that?

MR. COLTON: There was a company down in Alabama bought up by the American Bridge Company, was there not?

THE WITNESS: I heard that they bought a plant that was located at Decatur.

By MR. COLTON:

Q. Yes.

A. But it was not a part of the American Bridge Company. It was never operated by the American Bridge Company. I know of that plant, through its having been offered to me at least six or seven years prior to 1900.

Q. They had a very small capacity, something like 1,000 tons, was it not?

A. It was not equipped; had very few tools.

Q. It had a rated capacity of something like 1,000 tons, did it not?

A. I could not answer that; I would not admit it. I never saw the plant.

Q. You never saw the plant?

A. I have had it described to me by the party who tried to sell it.

Q. When was it taken over by the American Bridge Company?

A. That I do not know; but it was—well, I will not even hazard a guess.

Q. Do you know whether they took a contract from the

Alabama Company similar to what they took from the other companies, to stay out of business for twenty years?

A. I do not. I have no knowledge of those facts whatever.

Q. What class of work, as regards heavy structural and heavy bridge work, is done by the Toledo Bridge Works?

A. The present Toledo plant?

Q. As of 1901, the date that it was taken over, if that was the date.

A. My recollection is that in 1901 the new plant, which is a plant we now operate, was not quite completed.

Q. The old plant——

A. The old plant was running.

Q. Do you know what class of work was being done at the old plant?

A. Yes; I knew what they used to do prior to 1900.

Q. What percentage of that was heavy structural and heavy bridge?

A. They did practically no structural work; highway bridges.

Q. What percentage was heavy bridge?

A. Highway bridges and railroad bridges; possibly about 6,000 tons might be a fair rating on the heavy bridge work.

Q. What would the light bridge work be?

A. About the same.

Q. About half and half?

A. About that.

Q. What percentage of heavy structural work or heavy bridge work was done by the Buffalo Bridge & Iron Works?

A. They did no bridge work; they did structural work in and near Buffalo. As I stated, their territory was limited on account of their location.

Q. What per cent. of it was heavy?

A. Not over half.

Q. The Horseheads Bridge Company; what percentage heavy?

A. Absolutely none; nothing but a highway shop.

Q. The old Elmira Company; what percentage was heavy?

A. As far as they were able to get it; they ran on heavy

work. When they could not get enough heavy work, they filled up with light.

Q. It was equipped for the manufacture of heavy work, then?

A. Yes, sir.

Q. Could you give any estimate of what percentage of its works was heavy?

A. It varied from year to year. All of these would vary from year to year, you understand.

Q. I understand; but you have given approximate estimates. Can you give an approximate estimate of that?

A. That would be nothing but a guess, of course, because, as I say, it would vary from year to year. It would depend on the work they were able to get.

Q. Take 1900.

A. In 1900 I think that the Elmira plant did certainly two-thirds heavy work.

Q. The Groton Bridge & Manufacturing Company?

A. All light work.

Q. The Horseheads and the Groton, the two doing all light work, are among the two abandoned?

A. Yes; they were both abandoned.

Q. The Schultz Bridge & Iron Company; what percentage heavy in 1900?

A. It was a trifle.

Q. Only a small portion?

A. Almost negligible.

Q. How long was the Schultz Company operated?

A. After we took it over?

Q. Yes.

A. I should say three or four years.

Q. The Pittsburgh Bridge Company; what percentage heavy?

A. A very small percentage.

Q. And that is still in operation?

A. No; that plant was burned.

Q. That plant was burned? When was it burned?

A. I should say about six years after the company was formed.

Q. The Keystone Bridge Company manufactured almost entirely heavy work, did it not?

A. It was largely heavy work; they did some mill building construction there; but as far as they were able to get it, they did heavy work.

Q. And a very large portion of it bridge work, was it not?

A. A large percentage of it bridge work.

Q. Would about three-fourths of it be heavy work at that plant in 1900?

A. In that particular year we had a very large tonnage of the subway work of New York City.

Q. That is heavy?

A. You might class it as heavy. Any shop could do it.

Q. A shop having a capacity of 600 tons a year?

A. Could do up to its capacity, surely.

Q. What sort of work was that?

A. Subway work, light columns and beam work, some small percentage of plate girder work, not heavy, though.

Q. Railroad bridge work was the more common work done by the Keystone plant, wasn't it?

A. Not necessarily railroad bridge work, but heavy bridge work so far as they could get it. When they could not they took other work.

Q. The Keystone plant was in a very wretched condition when you took it over, wasn't it?

A. I could not say. I had not seen the Keystone plant since 1894 or 1895 and I did not go through the Keystone plant again thoroughly at any time; I had been to it, but not examined it.

Q. How long was the Keystone plant operated, if it was operated, after it was taken over by the American Bridge Company?

A. It was several years, I do not know how many.

Q. Was it operated to anything like its theoretical capacity?

A. I cannot say, but I think that in 1900 we got out something approximating the rating I have given there.

Q. Something approximating 44,000 tons?

A. Something approximating that. That includes forg-

ings, all the side lines that they did. It does not necessarily mean they got out that much bridge work. They built eye bars, made castings, did a great many things, general forgings, all of which is included in that table.

Q. Wrought Iron Bridge Company. What per cent. of its work was heavy?

A. Practically none of it.

Q. How long was that operated?

A. It is still in operation.

Q. The New Columbus Bridge Company?

A. Light work.

Q. The Youngstown Bridge Company?

A. They did some railroad work.

Q. What percentage of their work was heavy?

A. I should say they could be fairly rated at one-half heavy.

Q. Lafayette Bridge Company?

A. A highway shop.

Q. Detroit Bridge & Iron Works?

A. That is another shop which tried to fill up on railroad work.

Q. Then the larger percentage of its work was heavy?

A. If the work was available it would all be heavy.

Q. In 1900 do you know about that?

A. In 1900 they did quite a bit of structural work, some of it very light.

Q. The Gillette-Herzog Manufacturing Company?

A. That is light building work, highway bridges; very little heavy work.

Q. Take a company like the New Columbus Bridge Company and the Horseheads Company, they not only did highway work, but it was primarily light, wasn't it?

A. It is a question of what you mean by the word "light."

Q. You have been using it, and every witness that has testified on the subject has used the expression; I understand there is no absolute line between heavy work and light work, but at the same time, every witness that has testified on this subject has used the expression, and I will use it in the same

sense that you and the other witnesses have used it, and you used it on direct examination as well as cross.

A. We call both those shops light shops.

MR. SEVERANCE: Which two are those?

THE WITNESS: Horseheads and New Columbus.

By MR. COLTON:

Q. And the Gillette-Herzog was a light shop?

A. Practically a light shop.

Q. Mr. Davis, when did you make up this list of estimates given on Defendants' Exhibit No. 90?

A. I cannot recall the exact day, but it is within a week.

Q. In view of that, Mr. Davis, I would like to call your attention to Swank's estimate for 1898. That was the date that you used for the independents in regard to a number of independents, didn't you?

A. 1898?

Q. In Defendants' Exhibit 89?

A. Yes.

Q. The Berlin Company in Swank is given——

MR. SEVERANCE: What page in Swank's?

MR. COLTON: Page 278.

By MR. COLTON:

Q. (Continuing) It is given at 12,000 tons, and it is given in your estimate as 12,000 tons. That is your own company?

A. Yes.

Q. You understand as a rule Swank got his statistics direct from the owners of the shop?

A. I suppose he did.

Q. Do you know whether your shop sent any from year to year?

A. I cannot say.

Q. You do not know whether they did or not?

A. I don't know.

Q. The Edge Moor is given in Swank——

MR. SEVERANCE: What state is that?

MR. COLTON: That is Delaware.

By Mr. Colton:

Q. (Continuing) ——is given in Swank's, at page 280, as 40,000 tons, and is given by you at 25,000 tons. Had you visited the Edge Moor works in the early part of 1900?

A. I was there prior to 1900.

Q. What time were you there?

A. Two or three years before that.

Q. And how long were you there?

A. I was there a day.

Q. Did you make an estimate of the capacity at that time?

A. Undoubtedly I did, because I did that at every plant I ever visited.

Q. This 25,000 estimate was made a week or so ago?

A. Yes.

Q. From what did you make this 25,000 estimate?

A. A knowledge of what the plant has actually done when running full.

Q. Your recollection of it, or did you look up some records?

A. I did not look up the records at the time I prepared that.

Q. I know, but where did you get 25,000 tons?

A. That is my estimate of what that plant could do.

Q. Your estimate based on what?

A. Based on my knowledge of what the plant has done.

Q. What has the plant done?

A. About that; it has done a little more in some years.

Q. Then whether it failed to do more than that, do you know whether it failed to do more than that because it did not get the work, or because it did not have the capacity?

A. You are speaking as of 1900?

Q. I am speaking as of 1900.

A. I do not believe it could do more than that in 1900, running full.

Q. You think then that you know more about what it could do than the owners who furnished the statement to Swank?

Mr. Severance: Objected to as founded upon no evidence.

Mr. Colton: Mr. Gray, who got out the 1900 directory,

testified as to how it was gotten from the owners in each case.

MR. SEVERANCE: That testimony was purely general.

THE WITNESS: May I ask if they have included the Edge Moor Iron Works in that Swank estimate? The two plants prior to 1900 were under the same ownership.

MR. SEVERANCE: May I read the entry? I have it in front of me.

MR. COLTON: Yes. Page 280.

MR. SEVERANCE: "Edge Moor Bridge Works, Wilmington; works at Edge Moor; railroad and highway bridges, also erect iron and steel buildings; annual capacity 40,000 tons."

By MR. COLTON:

Q. The title is "Bidge Building Works," and then on page 280 is what Mr. Severance has just read to you.

MR. SEVERANCE: It also includes iron, you see.

MR. COLTON: It is given as "Edge Moor Bridge Works, Wilmington, works at Edge Moor, railroad and highway bridges, also erect iron and steel buildings, annual capacity 40,000 tons."

THE WITNESS: I will say for example that in those days the buckle plates made by Edge Moor were made in the iron company's plant in the boiler shop but were sold by the bridge company. There was quite a tonnage of those. They never made buckle plates in the bridge company's plant. They may have made some other part of their work, but I recall that. If that was included in the tonnage of bridge work it would undoubtedly swell their output quite considerably.

Q. But with the independents you did not make any separation, did you?

A. I believe I testified that in making my list of independents I dictated that list from memory. I then referred to Swank and where Swank gave a rating I used that.

Q. You used the rating from Swank, and when you used the rating from Swank you did not separate out such matters as you have just testified to as included in this Edge Moor?

A. Unless I took each of these companies separately I could not tell you whether they had any such adjuncts.

Q. I know, but what I am getting at is whether you did separate them or not. Didn't you take it direct from Swank just as given in reference to the independents?

A. I did.

Q. Now take the Elmira Bridge Company; when were you at that shop?

A. I was at Elmira in 1894 or thereabouts. I was there again two or three years later.

Q. In 1894 and 1897?

A. I should say about then.

Q. When else?

A. I have been there a great many times since 1900.

Q. How long after 1900 before you went there?

A. Possibly two or three years.

Q. Now, Swank gives Elmira as having 30,000 capacity and you give it as 24,000?

A. Yes.

Q. That estimate was made only a week or so ago?

A. Yes.

Q. Have you any recollection about Elmira manufacturing other things than what are included usually in bridge and structural work?

A. No, sir. My estimate there was largely influenced by conversations I had with Mr. Grimes, at that time president of the Elmira Bridge Company, and Mr. Hawxhurst, who was vice-president, and also with the chief engineer.

Q. At what time did you have these conversations?

A. Before 1900.

Q. Back in 1897?

A. Yes.

MR. SEVERANCE: You said 1897?

THE WITNESS: I was there in 1897, yes.

MR. COLTON: I except to the estimate given in Defendants' Exhibit 90 for Elmira as based on hearsay.

THE WITNESS: Well, I made my own estimate of the plant, too.

By MR. COLTON:

Q. Now, take the Groton Bridge & Manufacturing Company. When were you there?

A. I never saw the Groton plant except from the outside. I have never been on the inside.

Q. Swank gives that as 10,000 in 1898. What reason do you give for accepting your estimate as against Swank's estimate in regard to the Groton Bridge & Manufacturing Company?

A. By general knowledge of the trade, what they have sold and gotten out, and talking to their people.

Q. When did you talk with their people?

A. Pretty nearly every year from 1890 on.

Q. And you base it on what you heard them say?

A. Naturally it would influence me to some extent.

MR. COLTON: I object to Defendants' Exhibit No. 90, in so far as it attempts to give the capacity of the Groton Bridge & Manufacturing Company on the ground that it is partly based on hearsay.

By MR. COLTON:

Q. The Union Bridge Company is given by Swank as having a capacity of 25,000 tons, page 280 of 1898; when were you at the Union Bridge Company?

A. I never visited the Union plant.

Q. And your estimate there is based in part on hearsay?

A. And general knowledge of the trade, and talking with their people; Mr. Charles McDonald and William McDonald.

Q. Do you know whether the Union Bridge Company turned out anything that is not ordinarily included within structural and bridge work?

A. They made forgings and castings for the trade as well as for their own construction, and made eye-bars.

Q. Eye-bars are ordinarily included in bridge work, are they not?

A. Yes, but they made more than was necessary for their own use.

Q. I understand, but it is bridge material?

A. Yes.

Q. I will read you the entry: "Union Bridge Company, Athens. New York office, 1 Broadway. Railroad bridges only. Annual capacity, 25,000 tons."

The owners there seem to have attempted to limit it to bridge work.

A. That is what they tried to build. I know, however, that they built other work.

Q. Now, the New Jersey Steel & Iron Company. When were you at their plant?

A. I was there several times prior to 1900.

Q. What years?

A. I should place my first visit about 1894.

Q. When was your next?

A. I don't recall the dates, but several times.

Q. Several times before 1900? Do you recall whether you were there immediately before 1900?

A. No; not within a year or two, I should say.

Q. Can you give any date, between 1894 and 1900, approximately, at which you were there?

A. I know I was there in 1897.

Q. Swank gives the New Jersey Steel & Iron Company as having a capacity of 30,000 tons. You give it as having a capacity of 24,000 tons. On what do you base your estimate?

A. General knowledge of the business.

Q. And what you heard people say?

A. Not only that; it was what they themselves said.

MR. COLTON: I object to Defendants' Exhibit 90 in so far as it relates to the New Jersey Steel and Iron Company, on the ground that the witness admits that his testimony is partly based on hearsay.

By MR. COLTON:

Q. The Rochester Bridge & Iron Works: Was that equipped to manufacture other things than ordinary bridge work?

A. It had a plant or building equipped for the manufacture of riveted steel pipe.

Q. And riveted steel pipe is not ordinarily included in bridge work?

A. No, sir.

Q. In Swank's directory for 1898, page 279, "The Rochester Bridge & Iron Works, John F. Alden, proprietor,

Rochester, railroad and highway bridges; also erect iron and steel buildings; annual capacity, 12,000 tons." Do you know whether, within that 12,000 tons, is included any capacity other than ordinary bridge capacity?

A. They could not get out that tonnage of bridge work.

Q. As of what date are you speaking?

A. I am speaking of any date prior to 1900.

Q. When did you see their plant first?

A. 1894 or 1895.

Q. When did you see it next?

A. I don't think I ever went inside of the shop after that. I have been to Rochester, however, and have seen the plant.

Q. You have not been inside the shop since 1894?

A. No, sir.

Q. On what do you base your statement that it could not get out 12,000 tons of bridge work?

A. I know that the plant was not enlarged as regards its bridge capacity after I visited it.

Q. How do you know that?

A. I mean, the buildings were not changed.

Q. How do you know that?

A. I could see them.

Q. You have seen the buildings?

A. Yes.

Q. You have not been inside of them?

A. No, sir; not after 1894.

Q. Can you not change the machinery inside of a shop so that it will not show on the outside of the building?

A. I know from general knowledge of the trade, and discussing the matter both with Mr. Alden and Mr. Mosserop, his engineer, that they did not make those changes.

Q. Do you base your testimony partly on what they said?

A. Yes; I presume so.

MR. COLTON: I object to the testimony in respect to the Rochester Bridge & Iron Works on the same grounds as those on which I objected to previous testimony in respect to the other companies named.

MR. SEVERANCE: Who was it you said you talked with?

THE WITNESS: Mr. Alden and Mr. Mosserop.

MR. SEVERANCE: The same men that are mentioned in Swank?

MR. COLTON: Yes.

MR. SEVERANCE: A statement in Swank is not hearsay, and the statement of this witness is hearsay?

MR. COLTON: It is reported in the official course of business to Swank, and you credited that work as authoritative.

By MR. COLTON:

Q. The Hilton Bridge & Construction Company. When were you there?

A. To go through the shop, only once.

Q. When?

A. About 1896.

Q. Do you base your estimate of 4,800 partly on what you have heard said?

A. No, sir; that was my estimate of what they could do, after visiting the shop.

Q. And you visited it in 1896?

A. I did.

Q. And you do not know what changes were made between 1896 and 1900?

A. Outwardly, none.

Q. You mean the buildings had not been changed?

A. Yes.

Q. You don't know whether the machinery has been changed or not?

A. No, sir; I do not. I also discussed the matter with Mr. Elnathan Sweet, its president, and Mr. Hilton, its engineer, in the nineties.

Q. Did you base your estimate partly on that discussion?

A. I did not. I put it in on what I thought it could do, when I visited it.

Q. Take the American Bridge Works; you estimate it as having a capacity of 20,000 tons; when were you there?

A. I never saw the American plant prior to its being taken over by the American Bridge Company.

Q. Swank gives it, in 1898, as having an annual capacity of 30,000 tons.

A. He may have included the axle and forge department, which I excluded.

Q. I will read you what he says, to see whether that is so or not. I read from page 283 of the 1898 directory:

"American Bridge Works, 40th Street and Stewart Avenue, Chicago; railroad and highway bridges; also erect iron and steel buildings; annual capacity, 30,000 tons."

What do you understand that to mean?

A. Just what you state. He has not included the forgings.

Q. On what do you base your estimate of 20,000 tons?

A. On my knowledge of what the plant has done since it was taken over.

Q. But not any knowledge prior to the time it was taken over?

A. No, sir.

Q. You had no knowledge on that?

A. No, sir.

Q. Do you know whether this plant has been operated to full capacity since it was taken over?

A. It was, by the American Bridge Company for several years.

Q. What did it produce in the year 1900, if you know?

A. I do not know exactly.

Q. Mr. Davis, isn't it a fact that in the statistics where the owners give their own ratings they are apt to overstate it five or ten per cent.?

MR. SEVERANCE: I object to that question as purely speculative, not a question for expert testimony, and incompetent.

MR. COLTON: In view of the objection I will withdraw the question.

By MR. COLTON:

Q. Mr. Davis, what if anything do you know of the canvass which President Hatfield of the American Bridge Company made or had made in 1908 into the capacity which competitors of the American Bridge Company had in 1901, and of the finding as a result of said investigation that the Amer-

ican Bridge Company had at that time an annual capacity of 700,000 tons as against 620,000 tons for its competitors?

A. I never heard of it.

Q. You did not confer with Mr. Hatfield in regard to that?

MR. SEVERANCE: Objected to as assuming Mr. Hatfield had something of that kind done, of which fact there is no evidence; also as incompetent, irrelevant, immaterial and not cross-examination.

THE WITNESS: I never heard of any such canvass.

By MR. COLTON:

Q. You did not know of any canvass made by the American Bridge Company in about 1908, into what the capacity of its competitors was in 1901, and what its own capacity was at that time?

MR. SEVERANCE: Same objection.

THE WITNESS: I never heard of it.

By MR. COLTON:

Q. Mr. Davis, you abandoned or ceased to operate the Hilton Bridge Construction Company about ten years ago?

A. Those dates are all a matter of record. I have never burdened my mind with them, but I should say approximately that. I know it is quite a long while ago. It might not have been quite so far back as that.

Q. And the Rochester Company about eight or ten years ago?

A. Yes, I should think so.

Q. And the Buffalo Bridge & Iron Works eight or ten years ago?

A. Yes.

Q. The Horseheads Bridge Company eight or ten years ago?

A. Yes, sir.

Q. When did you cease to operate the old Elmira Bridge Company plant?

A. When we completed the new plant at Elmira Heights.

Q. That was eight or ten years ago?

A. Oh, no. We completed that plant I would say about six or eight years ago. I don't know exactly when.

Q. And the Groton Bridge Company about eight years ago?

A. At least that. More, I should say.

Q. The Schultz Bridge Company about eight years ago?

A. Yes, about such a time. I don't know. The number of years means very little to me. I have not paid any attention to it.

Q. And the Keystone Plant about eight years ago?

A. I should think so.

Q. And the New Columbus plant about eight years ago?

A. About that.

Q. And the Youngstown plant about eight years ago?

A. I do not recall when we abandoned these various plants. I would say prior to 1910, some time, would fit those.

Q. The Lafayette plant about ten years ago?

A. Between 1900 and 1910.

Q. Can you give it a little more accurate than that? Wasn't it about ten years ago?

A. It may have been.

Q. To your best recollection?

A. I have no recollection of those dates at all.

Q. On direct examination you said ten years ago.

MR. SEVERANCE: He said about ten years ago.

THE WITNESS: About.

By MR. COLTON:

Q. That is your best recollection, isn't it?

A. Yes, about ten years.

Q. Can you give the positive date at which any one of these plants was abandoned or ceased to operate, or the year in which the company ceased to operate?

A. I do not think I could.

Q. What percentage of James H. Tower's work was heavy bridge work?

A. Tower built no bridge work; he did some heavy structural work, although the most of it he purchased.

Q. He purchased the material?

A. No, he purchased most of his heavy work; he sold a great deal more than he could fabricate.

Q. Did he do some heavy building?

A. Ordinary city building work in Providence.

Q. Would he take a building requiring two or three thousand tons?

A. Oh, no; no such buildings were put up in Providence in those days.

Q. Would he take a building requiring a thousand tons?

A. It depends. If you spread a building out on the ground so it would take a thousand tons it might not be very heavy.

Q. Could he take a building requiring a thousand tons?

A. Certainly. Why not?

Q. Wouldn't he have to purchase the material if he did?

A. He might purchase some. It would depend on what time he had to deliver the goods.

Q. Isn't the material in a building requiring a thousand tons usually somewhat heavier than in smaller buildings?

A. Not necessarily.

Q. Well, ordinarily these city buildings, aren't they heavier material?

A. You refer to city buildings?

Q. Yes.

MR. SEVERANCE: What do you mean by city buildings, New York City, or all cities?

MR. COLTON: I will let the witness answer.

THE WITNESS: I am assuming he means a heavy city office building, such as might be put up in Providence.

By MR. COLTON:

Q. Yes.

A. Whether a building containing a thousand tons would be heavier than one containing a hundred tons?

Q. Ordinary office buildings of such type as you have just described.

A. That would not be possible of an answer because you might have a large office building that would be of what we know as the wall bearing type.

Q. How high would that be?

A. It might be run up six or eight or ten stories. We have the Potter Building here that is even higher, of the wall bearing type. There might not be any heavy work in it.

Q. And a little bridge shop that gets out 600 tons a year could take that kind of a building?

A. Absolutely.

Q. And how much tonnage would go into that?

A. I do not know; it depends upon how long they might have in which to get out the work.

Q. Do you know of James H. Tower ever having taken any such a building as that?

A. I do not recall any such building, but I know he has been in business there a great many years, and has sold building work in the city of Providence.

Q. Do you know whether he has fabricated that work himself or whether he has had the fabrication done elsewhere?

A. He has done both.

Q. As to any particular building, you do not know whether he bought his material or fabricated it, or not?

A. On a particular building?

Q. On buildings in general, or particular, either way; do you know whether he bought the material or whether he fabricated it himself?

A. He did both.

Q. Do you know whether he fabricated the entire material for a single such building as you have described?

A. I could not say that he did, because I was not running Mr. Tower's business.

Q. Do you know any building built by James H. Tower that required 1,000 tons?

A. I don't recall it.

Q. What percentage of the Walsh Boiler Works was heavy bridge work?

A. None of it.

Q. What percentage of it was heavy structural work?

A. As we are using the term "heavy structural work," I should say none.

Q. The Yale Safe & Iron Company, what percentage of that was heavy structural work?

A. None.

Q. Heavy bridge work?

A. None.

Q. Cooper & Wigand of New York.

A. They also bought most of their work, although they fabricated quite a bit in a small shop which they had here at that time.

Q. Did they fabricate any heavy bridge work, so far as you know, at that time?

A. No bridge work.

Q. Did they fabricate any heavy structural work, so far as you know, fabricated in their own shop?

A. They took contracts for heavy building work. How they split that up I have no means of knowing.

Q. They were contractors?

A. Yes.

Q. Contractors frequently get material from such companies as the Cambria and Jones & Laughlin, where it is already fabricated?

A. Yes, or from Pencoyd, or any other mill.

Q. The Hinkle Iron Works, what percentage of theirs was heavy bridge work?

A. I never knew of their doing bridge work.

Q. Heavy structural work?

A. They are like Cooper & Wigand, they contracted for a great deal of building work in New York City and vicinity.

Q. Do you know whether they did any heavy structural work in their own shop or not?

A. They could.

Q. Did you visit their shop prior to 1900 or during 1900?

A. No, I never saw their shop.

Q. Do you know how their shops were equipped at that time?

A. Only from general knowledge of the trade, and what the papers stated.

Q. But you know that as contractors they took, and you do not know how far they did the work in their own shops?

A. I could not tell you that.

Q. How can you tell whether the shops were equipped with machinery to fabricate heavy structural work?

A. General knowledge of the business.

Q. Without knowing anything about the shop?

A. It is not necessary.

Q. They were contractors?

A. Contractors.

Q. From the fact that they took large contracts, you know that they could fabricate heavy structural work?

A. That might and might not be a fair assumption.

Q. What other assumption have you got?

A. I know that they sold the work; I could not tell you whether they fabricated it or purchased it.

Q. The Hedden Iron Company, what percentage of theirs was heavy bridge work?

A. I never knew of their doing bridge work; they may have done some.

Q. Heavy structural work?

A. They were the same as Cooper & Wigand.

Q. That is, they were contractors?

A. Contractors largely.

Q. You did not have any great personal knowledge of their shop, did you?

A. No first hand knowledge of their shop.

Q. Or what sort of material they fabricated in their own shop?

A. I could not answer. I would have to be at their shop every day in the year in order to answer that question.

Q. You would not have to be there every day in the year to know what kind of machinery they had?

A. No, sir; but you can fabricate heavy work on light machinery. The converse is not true.

Q. You said the other day that they could do very heavy work, such as was done by Pencoyd and Ambridge, but it could not be done economically—it would not be economical, although it could be done?

A. Quite true.

Q. I am speaking of economically.

A. We frequently do things in this trade that are not economical.

Q. But when it is not economical, they do not amount to much in the way of competition, if they had to do it at an economical loss?

A. That does not follow at all in our business.

Q. You mean that they would operate constantly at an economic loss, or would they confine their work to that class out of which they got a profit, as a rule?

A. I guess they could not continue in business indefinitely if they netted a loss each year.

Q. So that as a rule they would do the class of work they could do economically?

A. One would suppose so.

Q. Levering & Garrigues prior to 1900 were large contractors?

A. They were large contractors, but they had a very small shop.

Q. Did you visit their shop?

A. I did not; very small.

Q. Did it turn out any heavy bridge work?

A. I never knew of their taking bridge work.

Q. Did you know of their shop turning out any heavy structural work?

A. I could not answer that of my own knowledge.

Q. The Lane Bridge Company; any heavy bridge work done by that company?

A. No, I would not class it as heavy.

Q. How about heavy structural work?

A. I never knew of their doing any.

Q. The Belmont Iron Works; any heavy work done by that company?

A. I could not say.

Q. I said heavy work; either heavy structural or heavy bridge.

A. They were contractors for general structural work in Philadelphia and vicinity at that time; whether they built all of it or part of it in their own shops I could not say.

Q. Thomas Dimond; did he do any heavy bridge work?

A. Not to my knowledge.

Q. Any heavy structural work?

A. No, sir.

Q. The Russell Wheel & Foundry Company: Did they do any heavy structural?

A. I never heard of them in the bridge business.

Q. Did they do any heavy structural work?

A. They took office buildings in Detroit.

Q. Were they not contractors?

A. They bought some of their work from the Carnegie Company and some they fabricated themselves.

Q. You never saw their shops, did you?

A. I never saw their shops prior to 1900.

Q. You do not know what sort of machinery they had in their shops?

A. Not at that time.

Q. And you don't know whether they fabricated any heavy structural work in their own shops or not?

A. I do not.

Q. The Schuylkill Bridge Company, did they do any heavy bridge work?

A. It does to-day.

Q. Did it in 1900?

A. Yes.

Q. What was its capacity in 1900?

A. The Schuylkill?

Q. Yes.

A. I think that is given in Swank.

Q. It was 840 tons in 1898.

A. I think it was larger than that.

Q. In 1900?

MR. SEVERANCE: You think what?

THE WITNESS: I think it was larger than that. That is my impression.

By MR. COLTON:

Q. That was two years later, so it might have been?

A. It might have been. That I only know by hearsay,

from my general knowledge of the business, as to what they took.

Q. You never visited their works?

A. I did not.

Q. Do you know whether they were contractors or not?

A. I could not say. I know they contracted for a great deal of work, much more than they could turn out in a shop of that given capacity.

Q. Did the Canton Bridge Company do any heavy bridge work?

A. I never knew of their taking heavy bridge work. They took some very large highway spans, but I am not classifying that, necessarily, as heavy bridge work.

Q. While once in a while a highway bridge is of such a character as to be very heavy, ordinarily the railroad bridge work is heavier than the highway bridge work?

A. It would generally weigh more per foot. I am thinking of it in that way.

Q. Bartlett & Hayward: Do you know of any heavy bridge work done by them?

A. I never knew of their doing bridge work. Light building work in connection with gas plants.

Q. The Converse Bridge Company, Chattanooga, Tennessee. Did you ever know of their doing any heavy bridge work?

A. My best recollection is that I did not know them in 1900.

Q. They are among the last ten.

A. Oh. Well, I did not know them in 1900. I know them since.

Q. Do you know of any heavy bridge work done by Patrick Noble?

A. I have heard of him; that is the same as the Pacific Rolling Mills Company in San Francisco. I always knew of him as Patrick Noble. I do not know under what name he conducted his business, whether it was as the Pacific Rolling Mills Company or as Patrick Noble.

Q. I did not mean to question you as to just what precise name he operated under, but you do not know of any heavy work done by him?

A. I do not know of any heavy bridge work. He has done heavy structural, I guess.

Q. Prior to 1900?

A. Yes.

Q. Prior to 1900 what heavy structures were erected by Patrick Noble, fabricated in his own shop?

A. I do not recall the names of them now. I was there in 1898, and talked with Mr. Noble, and he showed me some work in San Francisco that he had contracted for.

Q. Did he say anything about whether he had fabricated it in his own shop or not?

A. I didn't ask him.

Q. You don't know whether he fabricated it in his own shop or not?

A. I know that they had done that character of work, from my general knowledge of the trade.

Q. Levering & Garrigues did heavy structural work, did they not?

A. They contracted for it.

Q. I understand that; but they erected large buildings?

A. Oh, yes; they erected——

Q. Then, if you only know of a man that he is erecting large buildings, he may be doing it as a contractor, or he may be doing it as a fabricator?

A. He may be doing it as both.

Q. If he is doing it as both, and you have not been to the shop, you don't know whether he is doing the heavy work in his own shop or not, do you?

A. I could not tell you that. He might one year do the heavy work there, and another year conditions might be such that he could purchase it for less money elsewhere, and he would naturally buy it under those circumstances. At Berlin we frequently bought work that we could just as well have fabricated, but we could get somebody else to make a price lower than that at which we could figure our cost.

Q. From whom did you buy?

A. We bought work at Elmira.

Q. From anybody else?

A. No.

Q. That is, you bought from a larger company, as a rule?

A. A larger company.

Q. And, as I understood you yesterday, while there is not any absolute dividing line, the companies with the larger tonnage, as a general rule, do the heavier class of bridge and structural work?

A. Yes, sir.

Q. That is true, is it not?

A. That is true as a general rule.

Q. And they, as a general rule, can do it somewhat more economically than the smaller concerns?

A. If properly equipped and organized, they should. Their overhead expenses would be less.

MR. COLTON: I except to Defendants' Exhibit No. 89, as based in part on hearsay, and I except to the whole of Defendants' Exhibit No. 90, as based in part on hearsay.

By MR. COLTON:

Q. Would the tank tonnage mount up into the hundreds of thousands of tons?

MR. SEVERANCE: Where?

THE WITNESS: The total of the country?

MR. COLTON: Yes.

MR. SEVERANCE: When?

By MR. COLTON:

Q. In 1911; prior to October 26, 1911.

MR. SEVERANCE: You mean for three-quarters of the year?

By MR. COLTON:

Q. For a year; the annual tonnage in the whole country?

A. Yes.

Q. About how much would it be? Two or three hundred thousand tons?

A. I have no means of knowing.

Q. It would be more than 100,000, anyway?

A. Easily.

Q. Probably 200,000?

A. I should think so.

Q. What percentage of the American Bridge Company's own business was tank work in 1911, for the year preceding October 26, 1911?

A. A very small percentage.

Q. Five or ten per cent?

A. I kept no record of that distribution.

Q. Would you say that it was as much as five per cent.?

A. I would not hazard a guess, even.

Q. It was very small indeed?

A. It was quite small.

Q. What per cent. of the American Bridge Company's own business was its riveted pipe business for the same period?

A. Our riveted pipe work in 1911 was very small.

Q. Can you give me the per cent.?

A. I cannot say.

Q. Can you state whether it was less than two per cent. or not?

A. I cannot.

Q. What per cent. of the American Bridge Company's own work was its transmission tower work?

A. I have no knowledge as to that because I never kept records that way. You are asking what per cent. the tower business taken by the American Bridge Company in 1911 was?

Q. No, I am not asking for that. I am asking what per cent. of the American Bridge Company's total business was its tower business in 1911?

A. That is the way I understood it, only I was transposing it.

Q. It was a comparatively small per cent. of its work?

A. In 1911 we had just started our tower shop; that is my recollection.

Q. And prior to that time it would of course be negligible?

A. Negligible.

Q. Do you know what tonnage there is of transmission tower work?

A. To-day?

Q. Well, in 1911, in the entire country.

A. You mean what is the total tonnage of tower business in the entire country offered in 1911?

Q. Yes.

A. On the market?

Q. Yes.

A. It would be pure guess work; it would be quite a considerable tonnage, though.

Q. Would it be as much as 100,000 tons?

A. No, I should not think as much as that.

Q. Over 50,000 tons?

A. I should think at least 50,000 tons, in that neighborhood.

Q. What tonnage is gotten out in turn-tables, what is the total tonnage in the United States?

A. We never figure turn-tables by the ton. We figure them by number.

Q. What percentage of the entire country's business in turn-tables is done by the American Bridge Company, or was done in 1911, all told?

A. I should say that we have practically always done a majority of the turn-table business; we have made a majority of the turn-tables in the United States.

Q. The turn-tables are reckoned by numbers and never in tonnage?

A. We figure them by so many turn-tables sold, yes, because the tonnage varies greatly.

Q. What percentage of the barge business was done by the United States Steel Corporation during the year immediately preceding October 26, 1911?

A. I should say of the steel barges built for inland waters and of the character of barge that we built we were doing practically all of it in 1911.

Q. What percentage of your total tonnage would the barge business at any time be?

A. It would be one or two per cent., not over that.

Q. Buckle plates would be very small in tonnage?

A. Very small, constantly growing less.

Q. You spoke the other day of truss bridge work and girder bridge work. Will you explain those two terms?

A. Generally speaking by girder bridge work we refer to structures where the web member is a plate, the flanges made up of angles alone or a combination of angles and plates. The section would be generally that of an "I."

MR. SEVERANCE: Would you please speak louder. I cannot hear you.

THE WITNESS: I am describing a plate girder. I said its web was made up of a plate with flanges made up either of angles alone or a combination of angles and plates or some other combination of shapes, and the general section of that girder is like the capital letter "I." You can also have a lattice girder where instead of having a web member of plate, of a single plate, you can have lattice members in the form of a truss, some system of web members taking the place of the plates.

A truss bridge we know as being either—you can say it might be similar to a lattice girder, the same general type, formed of separate members connected at the intersections, having chords and a web system; some general system of triangulation to carry the loads from the point of application to the point of support of the bridge.

By MR. COLTON:

Q. From the viewpoint of burden which the bridge is capable of sustaining does it make any difference in which way it is built?

A. Absolutely none, within the limits.

Q. What do you mean by within the limits?

A. We practically never build plate girders over 130 feet in length. If the bridge exceeds that span we would use a truss bridge.

Q. Mr. Davis, referring to Defendants' Exhibit 92, which is the one that gives the Harriman orders, under Harriman orders, are you giving the entire tonnage that was ordered by the Harriman lines, in whatever way ordered, or only such as was ordered under those particular contracts to which you referred yesterday?

A. I am referring only to such orders as the American

Bridge Company took from the Harriman system in those respective years.

Q. Are you referring to everything they took from the Harriman lines, or only to what they took under those particular contracts?

A. Anything we took from them would be under those contracts.

Q. All kinds of bridge work, whatsoever, would be under those contracts?

A. Yes; we did not get all the Harriman work, however.

Q. You include also any tonnage that was ordered, such as for the Georgia Central Railroad, some of the eastern roads that Harriman allied with them in order to get the rebate of five cents discount; if they ordered 3,000 tons a month they got a rebate, didn't they?

A. I cannot recall all of the various changes through which the contracts went. If you say they did I am willing to accept it. We did take some work from the Central of Georgia.

Q. You do not want to take it on my statement. I was simply asking for information.

MR. SEVERANCE: You made it in the form of a statement.

MR. COLTON: That was my understanding of what the facts were, but I do not want the witness to assume he had to assume what I said was true.

THE WITNESS: I don't know that they took advantage of that particular part of the contract if it existed; some contracts did not have that proviso.

By MR. COLTON:

Q. But you do recall that some of the Harriman contracts had the proviso that if they ordered as much as 3,000 tons per month that they would get a discount?

A. Of duplicate work.

MR. SEVERANCE: It was not as much as that in any of those years. It did not aggregate 36,000 tons in any year, did it?

MR. COLTON: It did not have to aggregate that for a year; if it aggregated 3,000 tons a month they got the rebate.

THE WITNESS: I have a recollection that they not only had to order 3,000 tons a month, but it must be duplicate and standard work. They ordered a great deal of work that was not standard.

By MR. COLTON:

Q. But they could apply it on any one of a number of different lines?

A. Oh, yes.

Q. You do not now recall whether they could apply it on the Georgia Central Line or not?

A. If the Central of Georgia Road was a party to that contract in a year when the discount applied then they had the advantage of that discount.

Q. In order not to burden the record I will show you Volume II of Government Exhibits, pages 896 and 897, and call your attention to the contract between the Carnegie Steel Company and the American Bridge Company. Are you familiar with the contract there set forth?

A. I never saw it before; I never saw that contract.

Q. What were your duties in 1900 with the American Bridge Company?

A. In 1900 I was assistant to Mr. William H. McCord, vice-president in charge of structural contracting.

Q. William H. McCord was connected with which one of the American Bridge Companies?

A. William H. McCord was of the firm of Post & McCord, taken over by the American Bridge Company.

Q. I understand, but you now say you were assistant to him, and to the president of one of the companies, as I understood. There were two companies, the American Bridge Company of New Jersey and the American Bridge Company of New York?

A. In 1900 there was but one company, the American Bridge Company, a New Jersey corporation.

MR. SEVERANCE: He explained that yesterday. That was organized afterwards.

MR. COLTON: I understand; I just wanted to get an idea of it.

By Mr. Colton:

Q. What were your actual duties at that time?

A. In 1900 the company was not very well organized to handle anything. We were trying to find our place and to feel our way along, and I therefore had no specific duties other than to keep in touch with all the structural work which was brought to our attention and see that it was properly handled by some one of the contracting people in the field.

Q. How was it brought to your attention?

A. It might be in the way of newspaper reports, it might be by a letter of inquiry from people desiring to build work —a thousand and one different ways.

Q. The structural work would come to you and you would make estimates on it?

A. I did not make estimates; they were made by the engineering department.

Q. Did you pass on the price of the work?

A. Not in 1900.

Q. I am asking about 1900.

A. Not in 1900 for the Bridge Company; the prices also were put on by the engineering department; all I had to do was with the selling price.

Q. Did you fix the selling price?

A. Not at all; that was always fixed by the man who was handling the job.

Q. What did you have to do with the selling price?

A. I gave him my general opinion as to about what that work ought to sell for, knowing the conditions of the trade, our own conditions, or anything else that might have a bearing on it.

Q. Passing to Defendants' Exhibit 11, page 118, Defendants' Exhibits, Volume I, do you know of any heavy bridge work by the Henry Ahr Iron Works, New York City?

A. No; he has a small structural plant here.

Q. You class that as light?

A. Light; I do not know what he does. It is a small jobbing shop. He might get out some heavy beam work; he is perfectly competent to get out very heavy beam work.

Q. Have you ever been in his shop?

A. I never have; I know of it from general knowledge of the trade and trade papers.

Q. The general class of work done by him would be light structural work?

A. I would look upon him as having that character of shop.

Q. The Alderhurst Iron Company, New Haven, Conn.

A. Very small.

Q. Light class of work?

A. Very light.

Q. What is this ornamental work you see classified in here quite frequently, "light structural and ornamental work?"

A. We restrict structural work to the steel frame of the building proper. Now, in addition to that, they will have fire escapes, elevator grills, door bucks, penthouse framing, although sometimes we take that in. The stack sometimes we include, and sometimes we do not, but we do not call it structural work. If it is included, it is always specifically mentioned; and there are also elevator pans, ornamental work of any character such as window gratings, and cleanout doors, and flues; any of those things would be classed as ornamental work.

Q. The ornamental work constitutes a very small percentage of your business, does it not?

A. No, we always, wherever we can——

Q. In tonnage?

A. It would in tonnage.

Mr. Severance: You were going to say something—"wherever we can?"

The Witness: Wherever we can we omit what we classify as ornamental work.

By Mr. Colton:

Q. And in tonnage, so far as you do it, it is a very small quantity?

A. It is a very small quantity, so far as we do it. It is a very small percentage of our aggregate tonnage.

Q. With some of these concerns I suppose it might constitute a considerable portion of that work?

A. It might; it would depend entirely on conditions of the trade.

Q. Take Davies, John J., Philadelphia; do you know of any heavy work done by that company?

A. No.

Q. The Dauchy Iron Company, Chicago, Illinois; do you know of any heavy bridge work or heavy structural work done by that company?

A. I have seen the name reported to us as having taken jobs on which we had tendered.

Q. But you do not know whether they were contractors, whether they took the jobs as contractors or as fabricators and contractors?

A. No, I could not tell you, but our people in Chicago always look upon them as legitimate bidders.

Q. They are classified here as 500 tons, light structural.

A. Yes, but frequently a small shop will fix the pace as to price with a very large one.

Q. It took the contract with some large concern that supplies it with material that it requires for a large job, and that tends to fix the price, just as a contractor may fix a price?

A. No; what I mean is that it might bid on a job which it is absolutely impossible for it to fabricate, but they will bid a price on it, and if the larger concerns that are competent to build that work wish it, they will generally have to meet that price.

Q. I understand. Now, a contractor sometimes does that same thing with you, doesn't he?

A. We are ourselves contractors.

Q. But I mean a contractor that has no structural shop at all will sometimes fix the price?

A. General contractors will sometimes do it; some do not.

Q. That is no reason for including, so far as a general contractor is concerned, his structural work in the capacity of structural work turned out?

A. I do not know as I get you; what do you mean by "general contractor?" It may be a concern like the Thompson-Starrett Company.

Q. I mean such a contractor as the Thompson-Starrett Company; do they do any fabricating work?

A. They do not; they are general contractors who buy all their steel work.

Q. Such a contractor as that?

A. He is not a competitor.

Q. He is not a competitor because he does not bid on structural work?

A. No.

Q. There are some contractors that do bid on structural work, even though they do not have shops?

A. Well, not as many as there used to be; undoubtedly there are some. Yes, I know of one in New York now.

Q. Who is that?

A. Mr. Lewinson.

Q. Who is that?

A. Mr. Lewinson. He has closed his shop now, and he is still bidding for work, which he buys.

Q. This is the Lewinson Company, New York City, mentioned on page 127 as having a thousand tons capacity, is that the one that you refer to?

A. If it is M. Lewinson Company of New York, that is the one.

Q. It is just given here as Lewinson & Company, New York City.

A. That is the only Lewinson & Company. He closed his shop about a year ago.

MR. SEVERANCE: He testified yesterday about Lewinson. He was in business in 1911, but he quit since; that is, he quit fabricating.

MR. COLTON: Yes. I just wanted to be sure. That is all.

REDIRECT EXAMINATION

By MR. SEVERANCE:

Q. Counsel asked you with reference to the Alabama Bridge Company?

A. Yes.

Q. What do you know about that company?

A. I know absolutely nothing about it since 1900, save gossip that was going around the office concerning it.

Q. That plant has not been operated by the American Bridge Company at any time, has it?

A. It has never been operated by the American Bridge Company.

Q. And the reason that you did not put the Toledo Company in your list, Exhibit 89, is because it was not owned by the Bridge Company in 1900?

A. I think I stated that it was not taken into the bridge company on the formation of the Bridge Company in May, 1900, and that list purports to give only those companies that were taken over in 1900.

Q. Counsel has called your attention to a number of cases where your estimate of the capacity of the subsidiary companies of the American Bridge Company differs somewhat from the figures given in Swank's Directory. Were you or were you not familiar with those shops, the character of work they turned out, the amount they were capable of turning out, after they came into the American Bridge Company?

MR. COLTON: Before you answer the question, I object on the ground that the time is not specified, and on the further ground that he has already been examined as to his familiarity during 1900 and the years previous thereto.

By MR. SEVERANCE:

Q. You may answer the question.

A. I was familiar with the output and product and character of work done by the plants which formed a part of the American Bridge Company, some of them before they were taken over and all of them after they were taken over.

Q. Did you or did you not take into consideration, in giving your estimate of the capacity of these plants, information that came to you in your official capacity as an officer of the American Bridge Company? By that I mean your knowledge which you acquired, that you just stated you had?

A. Yes; I imagine that did influence me to some extent,

because I saw the monthly production reports of these various plants.

Q. Have you examined Swank's Report for 1898 since this list was made up?

A. For 1898?

Q. Yes. The one concerning which counsel have interrogated you as to the capacity of the constituents of the American Bridge Company?

A. I think I glanced at it this morning.

Q. Not until this morning?

A. No, sir.

MR. SEVERANCE: That is all.

RECROSS EXAMINATION

By MR. COLTON:

Q. There is just one question I would like to ask you: You spoke of the Harriman orders being taken by competitive bids. How were those contracts let? Was there any general open bidding on those contracts that began back in 1904?

A. This is pure assumption on my part as to how the bids were sent out. We know that we received a letter requesting us to make such a tender. We were advised by people receiving that tender that others were bidding on the work.

Q. Who were you advised by?

A. By the people receiving the bids.

Q. What people receiving the bids?

A. The Harriman people. The purchasing department.

Q. That other people were having a chance to bid on that contract?

A. I don't know how you would describe it. They simply gave us to understand that others were competing for that work.

Q. They gave you to understand that others were competing for that work?

A. They gave our people to understand that—our people that were handling the work.

Q. What one of your people?

A. Mr. Bryan handled that particular job.

Q. Mr. Bryan knows what he was given to understand in reference to the Harriman orders? I mean he is the one that has personal knowledge of whatever information was conveyed?

A. He has personal knowledge of that work.

Q. And anything that you know about it is pure hearsay?

MR. SEVERANCE: I object to that as calling for a conclusion.

MR. COLTON: I say, is hearsay?

MR. SEVERANCE: I object to that as calling for a conclusion.

By MR. COLTON:

Q. I am going to change it. I withdraw the question, in view of the objection, and ask you if whatever information you have on that subject is derived from Mr. Bryan?

A. Reported by Mr. Bryan.

MR. COLTON: I object to this witness' testimony in respect to the Harriman orders, as based on hearsay.

MR. SEVERANCE: Is that all?

MR. COLTON: Yes.

By MR. SEVERANCE:

Q. At the time these contracts were made, you were occupying the position of assistant to the President, were you not?

A. Yes, sir.

Q. Were you daily in receipt of reports from Mr. Bryan and other employes of the company?

A. We received reports from each division manager.

Q. And the information that you got with reference to the competition for various jobs came to you in the regular course of business from these division managers?

A. It did.

Q. Including Mr. Bryan?

A. Including Mr. Bryan.

MR. SEVERANCE: That is all.

By MR. COLTON:

Q. When did Mr. Bryan inform you that others were competing on the Harriman work?

A. In the regular course of business.

Q. I asked you when he gave you that information.

A. I cannot give you the day and hour.

Q. Do you know whether it was at the time of the first contract that was taken in 1904, or at the time of the 1908 contract, or of what contract?

A. I have a very definite recollection of that. It was the first one, because it was a new form of contract.

Q. Just what did Mr. Bryan say to you there?

A. I do not recall his statement.

MR. COLTON: That is all.

(The witness was thereupon excused.)

(Whereupon a recess was taken until 2 o'clock p. m.)

AFTER RECESS.

WILLIAM CHASE TEMPLE,

a witness called by the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. LINDABURY:

Q. Where do you live, Mr. Temple?

A. Winter Park, Florida.

Q. What is your business at present?

A. Horticulturist and farmer.

Q. And is that business pursued in Florida?

A. Yes, sir.

Q. Were you ever connected with the steel industry in any way?

A. Yes, sir.

Q. Had you any connection with pools in the steel business in 1900 and before and after?

A. Yes, sir; I was commissioner of the Structural Steel Association, the Plate Association and the Steel Shafting Association.

Q. When did you become commissioner of the Structural Association?

A. I think early in 1898.

Q. When with respect to its formation?

A. It was formed in the latter part of 1897. I had no connection with it at the time it was formed, but became the commissioner early in 1898.

Q. Who were the members of that association?

A. That would be difficult to give from memory. I think the names of all the members are a matter of record that you can secure from the existing records.

Q. Suppose you give us those that you recall?

A. Carnegie Steel Company; Jones & Laughlin; Pencoyd; Cambria; I think Illinois Steel. It is rather difficult to separate these for the reason that so many of the members of the Structural Association were members of the Plate Association that I am apt to confuse one with the other; and another thing, they were changing, sometimes new ones came in and old ones would go out. Those I remember distinctly that I have just given. I think the Tidewater Steel Company were also members.

Q. Are you quite sure that the Illinois Steel Company was a member?

A. I am not absolutely certain. That was when I hesitated.

Q. What were your duties as commissioner?

A. I received all reports from the various members of the Association; investigated and reported on all claims made by one member of an association against another for alleged violations of their agreements; issued the statements each month; was custodian of their contracts and papers, and exercised almost the equivalent of what might be termed the general management of the associations.

Q. Did that association—I am only speaking of the Structural, now—I will ask about the others later—did that association hold stated meetings?

A. They had no stated meetings. They would meet from time to time. They generally endeavored to meet once a month, but they could meet with more or less frequency by

agreement or on call either of the president or of a certain number of members on demand. The commissioner issued these notices of call.

Q. Did that association ever divide territory among the members?

A. Never.

Q. Or limit output?

A. Never.

Q. What was the basis of their arrangement?

A. The basis of their arrangement was the maintaining of a uniform price for their products.

Q. In what way?

A. By agreement that they would sell only at a certain price materials of certain classifications within certain districts or freight zones. They would meet, decide on what they considered was a fair price as warranted by market conditions, by cost to produce, and would agree upon a price as being the pool price, and they were all under agreement not to sell within those freight zones at less than the prices named, everything being based on a certain fixed price f. o. b. cars Pittsburgh.

Q. Were percentages of output arranged between them?

A. Percentages of output were arranged in this way:——

Q. I ought to say percentages of business, rather than output.

A. At the time of the organization of the association each producer becoming a member filed a statement as to their capacity of output from their works. As my memory serves me, the original total output of the members forming the association was about 400,000 tons of structural material a year, each member making a statement as to what his output was, the sum total of all the members, of which I think there were eight, being taken as 100 per cent. The proportion of each member of the total being figured in the percentage of the whole, made the percentage to which that member was entitled in the pool. If on any month's shipments any member should exceed his percentage as shown by his original capacity percentage, he was penalized or taxed a certain amount based on a charge per ton or per hundred pounds on such

amount of shipment that he exceeded his allotment. Any one undershipping his percentage of the total shipments was credited with a corresponding amount based on the amount that he shipped less than his percentage to which he was entitled under the percentage fixed.

These percentages were changed from year to year as their shipments or capacities changed from year to year. Those changes were considerable. For instance, at the beginning, as I say, my impression is that there were 400,000 tons total structural capacity in the Association, and before the close of those Associations in 1904 they were actually shipping up to 1,200,000 tons.

Q. You say these Associations. You are referring now to the Structural?

A. I am speaking now of Structural.

Q. That was shipping that much?

A. Yes.

Q. Was any deposit made by the members to guarantee the performance of their undertakings?

A. There was originally a deposit made amounting to—I don't remember whether it was $50,000 or $100,000, but it was a deposit made to guarantee good faith and to have a fund up to which could be charged members' penalties in case they refused or failed to pay penalties when they were assessed against them. That was put upon the basis of their percentage of allotment. For instance if one member had 40 per cent. interest in the association he put up, as I recall it, forty per cent. of the fund. That fund, however, was unnecessary or undesirable after a few years and was abandoned.

Q. How long were penalties exacted?

A. I do not think beyond two years; it may have been three, but I do not think after the second year any penalty was ever paid.

Q. What was your connection with the Plate Pool?

A. Similar to that as already outlined in the Structural Pool, except that I was the first commissioner of the Plate Pool. When the Plate Pool was organized I was the first commissioner of that, up to the finish of its organization.

Q. Did you attend meetings of the Structural Pool when they had a meeting?

A. Yes.

Q. Did you attend the meetings of the Plate Pool when they had a meeting?

A. Yes.

Q. How long did the Plate Pool continue?

A. It was organized, I think, in 1900 and continued until 1904 at the same time the Structural Pool was disbanded. Both closed at the same time.

Q. And who were the members, so far as you recall, of the plate association?

A. Carnegie, Cambria, Jones & Laughlin, Worth, Lukens, and I think the Illinois was in that, but I am not certain.

Q. Did they have stated meetings?

A. They had stated meetings just the same; that is, they were supposed to meet once a month, but they did not regularly. They were subject to call just the same as the others.

Q. By whom?

A. The president could issue a call through the commissioner, or a certain number of members could issue a call through the commissioner, or the commissioner could issue a call on his own account if he thought the conditions warranted it.

Q. Were reports made to the commissioner by members of that association?

A. The procedure was practically the same as outlined in the structural. They were organized on the same basis or the same lines, and they had the same general procedure.

Q. And did the commissioner tabulate statistics?

A. He tabulated statistics for the plate pool just the same as he did for the structural.

Q. Did he make reports?

A. He made his report once a month to all members.

Q. Showing generally what?

A. Showing generally the amount of business done by each member of the association, the total business done by all members, the percentage of business done by each member, and also the pounds by each member; I mean the amount

that they were under or over their percentage of allotment, and the bonus or penalty for under or overshipments.

Q. What did you say was the other association?

A. The steel shafting.

Q. When was that formed?

A. I do not remember; it was a very small thing, and of very little consequence, but I think it was formed about the same time the plate pool was formed.

Q. Was that an active association?

A. It was an active association, but their aggregate business was very small, and it ran into such a little sister that it really amounted to very little.

MR. DICKINSON: Have you shown the members in that yet?

MR. LINDABURY: I will ask him.

By MR. LINDABURY:

Q. Who were the members of that?

A. Carnegie, Jones & Laughlin and Cambria, and there was one in Cleveland; I have forgotten the name; and one at Youngstown, another one from Beaver Falls, and a concern that Mr. Fitch represented; I have forgotten where they were from.

Q. I believe that terminated also in 1904.

A. Yes.

Q. Do you remember whether they had any meetings during the last two or three years?

A. They had no meeting after 1904.

Q. I mean before, during the two or three years before 1904.

A. If they had, they were so very few and wide apart that they made no impression.

Q. How came these organizations to give up, and what time in 1904 was it?

A. My recollection is that it was in November or December of 1904. We were holding a meeting, or were present at a meeting that had been called, and were notified by some of the representatives of the subsidiaries of the United States Steel Corporation that they had received positive instructions to withdraw from all associations, and that so far as they

were concerned, they would have no further connection with it.

As soon as that notification was received it was of course impracticable to continue them and they were dissolved then and there by mutual consent of all parties concerned. The treasurer was ordered, whatever moneys were in the treasury to the credit of any of the concerns, they were to be paid to it, and the whole thing cleared up. The Commissioner was ordered to clean it all up, destroy all papers, all records of every nature and kind, and each and every member of the Association agreed to do the same thing, and they were wiped off the map.

Q. Did the Commissioner do his part in the work of destruction?

A. He certainly did.

Mr. Colton: Some of the others did not.

Mr. Lindabury: One of the others.

By Mr. Lindabury:

Q. I think you have already stated that you attended all meetings of the Structural Association and all meetings of the Plate Association, have you not?

A. There might have been an exception now and then, but practically all of them. I had the minutes of any that I did not attend, because there was only one set of minutes and they were always in my possession.

Q. Did Judge Gary ever attend any of the Plate Association meetings?

A. No, sir.

Q. Did he attend any of the Structural Association meetings?

A. No, sir.

Q. Are you sure of that?

A. Yes, sir.

Q. Why are you sure of it?

A. For several reasons: One in particular, I myself had heard considerable talk among our members from time to time as to the possibility of illegality of the proceedings of the Associations. I knew Judge Gary personally slightly. I

knew that Judge Gary was a great stickler for the legal proprieties in everything with which he was connected, and I was looking forward with a great deal of interest to Judge Gary's attendance at any one of these meetings, in order that I might bring up certain things that I would like to see how Judge Gary took them, in view of what I had read and what I had heard, and being especially anxious to get Judge Gary in that fix, I was more or less disappointed in that I never had the opportunity.

Q. Were there any associations of the steel men with which you were connected after this dissolution of pools at the end of 1904?

A. We organized and continued from 1904 until the latter part of 1906 a structural association and a plate association from which was omitted all matters containing price or agreements as to price, the idea being brought up by some of the smaller members of the association which had just been disbanded that the meetings of the various makers from time to time and their exchange of views on costs, improved practice, general present and prospective business conditions were, in their opinion, of sufficient value to continue these meetings for that purpose; and it was finally agreed that they would run associations, retaining my services as secretary and statistician of these associations for that purpose, and those were continued, as I have stated from the dissolution of the pools until the final dissolution even of the statistical associations in 1906.

Q. At what time in 1906 did the statistical associations terminate?

A. I think in October.

Q. Yes. What was the character of the statistics that you gathered for those associations?

A. I received every month a statement from each of the members of these associations of their total shipments of various sizes and character, structural and plate, which were tabulated just as they were tabulated in the pool days, except that it made no difference where they went, it made no difference at what price they were sold; it made no difference in

what amount any member sold; there were no percentages calculated or reported.

Q. Or prices?

A. Or prices; simply the total amount shipped by each individual concern and the gross amount shipped by all concerns as a total.

Q. And what was done with those statistics that you thus gathered?

A. They were sent out to each member as soon as they were prepared by my office.

Q. Were they tabulated?

A. They were tabulated, and only the master copy was retained by my office, and that was only retained a month, because it was of no value. Personally I had very little use for those associations, anyhow, because it looked like a dog with his teeth all out. I never had any use for it or confidence in it. We carried forward every month the total shipments for the yearly period up to that time, in order that they might see what each was doing.

Q. How often did these associations meet during the period between 1904 and 1906?

A. They were very intermittent. Sometimes they would meet at periods of three months and sometimes I think they have gone for six months without a meeting.

Q. Did you attend those meetings?

A. Not so religiously as I did the others, because, as I say, they did not impress me as being any sort of a real thing, and I did not take much real interest in them.

Q. What proportion of them did you attend?

A. Probably half.

Q. Who attended in your absence?

A. My secretary would attend when I was not there.

Q. Was his name Langan?

A. Langan, yes.

Q. So that either you or he attended them?

A. Oh, yes.

Q. Speaking only about those that you attended, what was done at those meetings?

A. They would simply meet and discuss conditions of the

trade, discuss the general business outlook in the country, the future for business, whether, in their opinion, business would be better or worse; they would probably discuss matters pertaining to costs to produce, new methods, new concerns—just the same sort of general business discussion that might be indulged in by a set of wholesale dry-goods men at a club meeting.

Q. Were prices of individual products discussed at those meetings?

A. Never.

Q. Were apportionments or individual outputs discussed at those meetings?

A. Never.

Q. Were any agreements or understandings or discussions arrived at or had at those meetings?

A. As to what?

Q. As to prices or output or territory?

A. No, sir; they were not discussed.

MR. LINDABURY: You may take the witness.

CROSS EXAMINATION

By MR. DICKINSON:

Q. Mr. Temple, referring to the structural agreement of which you spoke, I will ask you whether or not the following were the members——

MR. LINDABURY: Which one, Judge?

MR. DICKINSON: The structural; that is the first one he referred to. Was it not, Mr. Temple?

THE WITNESS: Yes, sir; the structural was the first.

By MR. DICKINSON:

Q. The Carnegie Steel Company?

A. Yes, sir.

Q. Jones & Laughlin?

A. Yes.

Q. A. & P. Roberts Company; the Pencoyd?

A. Yes.

Q. The Passaic Rolling Mill Company?

A. Yes.

Q. The Phoenix Iron Company?

A. I was not sure whether they were structural or plate; but if you have it there, that is correct.

Q. The Cambria Iron Company, I believe, you mentioned?

A. Yes.

Q. The Universal Construction Company?

A. I do not remember the Universal Construction Company.

Q. That is the same as the Illinois?

A. It may be——

MR. LINDABURY: One moment. The witness is supposed to be testifying from his recollection.

By MR. DICKINSON:

Q. Do you know anything about the Universal Construction Company?

A. I do not remember anything about the Universal Construction Company.

Q. Your recollection was that the Illinois was a party, as far as you could recollect it?

A. My recollection was that the Illinois was a party; but I was uncertain.

Q. Yes; I remember you said you were not sure.

A. Yes.

Q. The Pottsville Iron & Steel Company?

A. I am not sure about those, Judge?

Q. The Cleveland Rolling Mill Company?

A. Yes.

Q. Then I believe you also mentioned the Tidewater Steel Company?

A. The Tidewater Steel Company? I am not sure whether that was structural or plate, but I think it was structural.

Q. Now, coming over to the Plate: I will ask you whether or not the following were parties to that: The Carnegie Steel Company?

A. Yes.

Q. Jones & Laughlin, Limited?

A. Yes.

Q. The Illinois Steel Company?

A. I think so, but I am not sure.

Q. The Crucible Steel Company?

A. They were members for a short time of one of the associations, but I do not remember which.

Q. The Otis Steel Company?

A. Yes.

Q. The Tidewater Steel Company?

A. Yes.

Q. The Lukens Iron & Steel Company?

A. Yes.

Q. Worth Brothers Company?

A. Yes.

Q. The Central Iron & Steel Company?

A. Yes.

Q. The American Steel & Wire Company; that is, the Cleveland mill?

A. Oh, yes.

Q. The Glasgow Iron Company?

A. Yes.

Q. You said that these associations changed somewhat in personnel; that from time to time some of the old ones went out and some of the new ones went in. Can you state from memory what those changes were, taking up first the structural?

A. Now, if you will just read that list as you did, I will tell you whether they changed or not, to the best of my recollection.

Q. I will read it just as I did.

MR. LINDABURY: Shall I not lay it before him as you read it?

MR. DICKINSON: Yes, page 76.

By MR. DICKINSON:

Q. Suppose you look at page 76, entitled "Exhibit B." Look at the names there and see if any of those went out that you recall before this first dissolution that you speak of in 1904, and if any new ones came in?

A. It will be rather easy to testify as to whether any of these went out, but it will be more difficult to testify as to

the ones coming in. May I read these as they are here with my comments on them?

Q. Take your own way about it.

A. The Carnegie Steel Company were in originally and stayed in. Jones & Laughlin ditto. The A. & P. Roberts Company I am not certain about. I think they were originally in as Pencoyd, but afterwards changed into the American Bridge Company as a subsidiary of the American Bridge. Of that I am not sure. Passaic Rolling Mill Company. I am not sure about their staying. Can you tell me? Was Watts Cook the President of the Passaic Rolling Mill Company?

Q. I don't know.

A. If so, my impression is that he was, and if so my impression is that they remained in to the end. The Phoenix Iron Company I am not sure about. Cambria stayed to the end. The Universal Construction Company I have no recollection of under that name, whatever.

Q. Assuming that it was under the control of the Illinois and was operated by that company, how would your answer be?

A. My memory is so indefinite as to the Illinois. I would think that the Illinois went in at the beginning and stayed in.

MR. COLTON: I will answer as to Watts Cook. He is.

THE WITNESS: The Pottsville Iron & Steel Company I do not think remained in but a short while, if I remember. The Cleveland Rolling Mill Company as the Cleveland Rolling Mill Company went out. That is my recollection

Q. You say it did go out?

A. Yes.

Q. At what time?

A. I do not remember. I do not think they stayed clear through to the end.

Q. Did the American Steel & Wire Company come in?

A. The American Steel & Wire Company came in either the structural or the plate, but I am inclined to think it was only the plate and not the structural, although they may have been in both. You will see that these two pools running so close together, the membership being so much the same in

both, that where there is an individual concern that is a member of one and not of the other, it is almost impossible, eight years after all records were wiped out, to remember who was and who was not in, excepting the important ones.

Q. Will you turn to page 70 and look at the names there and state which ones of those stayed in to the period of dissolution, and what others came in in addition to those, if any?

A. The Carnegie Steel Company were in and stayed in. Jones & Laughlin were in and stayed in.

The Illinois Steel Company were in, and I think stayed in. The Crucible Steel Company of America I do not think stayed in very long; they went out.

Q. Have you distinct recollection about that?

A. No, it is just a feeling—I could not tell you how many years they stayed in, but my impression is that they only stayed in about a year, or even less than that.

Q. So you are not making that as a positive statement?

A. No, sir; I am trying to give you the benefit of my best recollection.

Q. I just want to get it plain, what is vague in your mind and what is from absolute recollection.

A. The Otis Steel Company, as the Otis Steel Company, I do not think remained. The Tidewater Steel Company I think remained clear through, but I am not sure. There was a considerable part of the time they were in financial difficulties and were not shipping, and I rather think that they pulled out. The Lukens Iron & Steel Company stayed. Worth Brothers stayed. The Central Iron & Steel Company stayed. The American Steel & Wire Company I am not sure about, but my recollection is that they stayed. Glasgow Iron Company stayed.

Q. You have described certain features that characterized, as you stated, I believe, both of these associations; in fact, all three of them. I think you said that they were organized along the same lines, their essential features.

A. Yes, sir.

Q. Were they until this time of dissolution to which you have referred operated on the lines there indicated?

A. No; for the first one or two or perhaps three years——

Q. (Interposing) I will say with the exception of enforcing penalties.

A. On the same general lines; yes, sir, up until 1904, their dissolution.

Q. Coming now to the plate pool, will you look upon page 70 and state whether the percentages there set out were the percentages allotted under that pool agreement to which you have referred, to the respective companies whose names there appear, or if you do not remember the exact figures, state whether they are approximately correct.

MR. LINDABURY: I object to that, because the publication referred to was not the pool agreement.

THE WITNESS: I would like to answer that question fully, but it is impossible for me to remember what those percentages were. I am inclined to think that some of them are a little lower and some of them a little higher than the percentages that were adopted for use, and another thing that would make my answer to that question difficult is the fact that percentages changed from year to year based on their shipments from year to year.

Q. Mr. Temple, take the year when you first became connected with that association. I believe you said you were commissioner of that association from the very beginning?

A. Yes.

Q. State as near as you can the percentages allotted the first year to the various companies, and you can follow the order here for convenience set out on this page 70 of the original petition of the Government filed in this cause.

A. I could not possibly give the figures of those percentages.

Q. Referring now to the Plate Pool that you spoke of in your testimony, that you said was formed, and of which you were the first Commissioner, please state whether those who became parties to that association at its outset were at that time makers and sellers of steel plates?

A. They were supposed to be and were, as far as I know; I believe they all were.

Q. What officers, if any, did that association have?

A. A president, a treasurer and a commissioner, who also acted as secretary.

Q. Did it have any committees, that you recall?

A. I do not think they had an executive committee. They might have had, but I don't think so.

Q. You do not remember now if they had?

A. I don't remember, no, sir.

Q. State whether or not under the Association which you have referred to there was any agreement to report, and if the various members did report from time to time to the Commissioner or some other officer of the Association the sales that they made and the prices at which they sold.

A. You are referring to the so-called Plate Association?

Q. Yes, of which you have spoken.

A. They reported to the commissioner their total shipments, and it was not necessary for them to report the price for the reason that they were all under an agreement to quote the same price. That is, now we are speaking of the pools prior to 1904.

Q. Yes; I am only asking you down to that period. Then did the commissioner make all the members of that association participants in this knowledge furnished by each to the whole?

A. Yes, he put them all together and issued to them a statement within a day or two after the receipt of the statements from manufacturers showing how much they had shipped of each class of product that they dealt in, and the total by all members, and the percentage shipped by each member, the percentage to which each member was entitled under his pool allotment, and the penalty or credit to which each member was entitled for having overshipped or undershipped his allotment.

Q. And it showed all overshipments or undershipments also?

A. Yes, in pounds in each case.

Q. Who were the bankers with whom the deposits were kept by the various pools?

A. They changed from time to time. That was in the

sole charge of the treasurer. The treasurer decided what bankers he should deposit with. The original bankers it was contemplated would be Mellon & Sons, but whether Mellon & Sons ever had any of that account I do not know.

Q. That was the original one contemplated?

A. The original one contemplated.

Q. They may have had them?

A. They may have and may not; I have had nothing to do with handling the funds.

Q. You had nothing to do with handling the funds?

A. No, sir.

Q. Well, under that agreement I believe you said there was a guarantee fund, under both agreements?

A. Under the structural agreement. I do not think, my recollection is that there never was a guarantee fund put up in the plate pool; only in the structural pool. Before the formation of the plate pool, my recollection is that it had been found to be unnecessary.

Q. Now, suppose there was any reason for any party to either of those associations you have spoken of to feel aggrieved by the action of some other party; were complaints made and if so to whom?

A. They would be made to me as commissioner

Q. Then what action would you take about that?

A. I would then take the complaint as made and investigate it and find out whether in my judgment the complaint was well founded, and if it was, I would report my finding to the association at a meeting called either for that purpose or, if a regular meeting was near, I would report my finding and recommendation for punishment, if punishment was thought necessary.

Q. And what kind of punishment, if punishment was thought necessary, would it be?

A. It would be a fine, or it might be expulsion from the association.

Q. Now, you spoke of a guarantee fund in the plate pool.

A. In the structural pool.

Q. No, in the plate pool, I am asking about.

MR. LINDABURY: No, he said there never was one in the plate.

By Mr. Dickinson:

Q. You have spoken of a guarantee fund as to the plate pool, and you said it was then thought unnecessary. Explain that more fully; why wasn't it necessary?

A. In order to answer that I will have to be perhaps a little bit long-winded, and go back to a condition in the steel business when the structural pool was first formed. It is sad, but nevertheless a fact, that customers will lie sometimes, and most of the destructive wars that have taken place in manufacture have been brought about by the economization of facts, if not by direct misstatements by purchasers as to the prices quoted to them by the people from whom they bought.

Q. You said "economization of facts?"

A. Yes, withholding of a part of the truth. Prior to 1897 there had been some very disastrous times in the steel business. Manufacturers of structural and its sister product, plate, which enters largely into structural, had been fooled so often and so completely by some of the biggest buyers of structural material in the market that apparently there was always somebody who was ready to quote twenty or twenty-five per cent. below the cost to produce the manufactured stuff, judging from quotations that buyers would bring to the manufacturers. Finally two or three of the manufacturers got together and swapped notes and found to their surprise that each of them had been quoting prices five, six and seven dollars a ton less than they had ever quoted to anybody, and they awoke to the fact that they had probably been lied to. They called for a meeting among a large number of them, and they found that the only way to block that thing was for them to get together and agree on a price and to tell each other the honest truth as to what prices they were quoting. That brought about the Structural Steel Association. However, while these people strenuously denied to each other having quoted any such prices as the customers stated they had quoted, they were not without a considerable amount of doubt as to the integrity of their brother manufacturers as to the prices that they alleged they had quoted.

Q. There was suspicion all along the line?

A. Every man seemed suspicious of his brother man;

when they found out the degree that they had been worked by customers they naturally commenced to think that everybody in the business was crooked; therefore on the formation of the Structural Steel Association, when they drew up an agreement, in which agreement they were to maintain certain prices to be arranged from time to time, the question naturally arose: "Now, suppose some good brother falls by the wayside, and does not quote that price, how shall we penalize him?" "Well, fine him." "How are you going to get the fine out of him if he refuses to pay it?" Then came the guarantee fund suggestion that they would put up a certain amount of money in the bank to be subject to the order of the proper officers of the association, and when a man violated his agreement and was fined, he had his guarantee fund proportion up to draw against. But from the time of the formation of the Structural Association in 1897 to the formation of the Plate Association in 1900 that feeling of intense suspicion of members of each other had been mitigated to such an extent that they did not feel there was any necessity for a guarantee fund in the Plate. That is rather a roundabout way of getting at it, but I had to tell it to you in that way, in order to get it properly before you.

Q. As I understand, after they found out that by an agreement they could keep up the same price and that they dealt honestly with each other, so far as carrying out that understanding was concerned, they found they could dispense with the penalty?

A. Not exactly; but they felt that if anybody did violate his agreement, he could be collected from without having to put up a guarantee fund for that purpose.

Q. But there was an obligation wasn't there, to pay it, all the same?

A. Undoubtedly, yes.

Q. The only difference is that when they started out in this first suspicious stage they required it to be put up in advance?

A. Yes.

Q. And afterwards they relied upon their ability to collect it?

A. Yes. That, of course, was prior to 1904.

MR. LINDABURY: They required security before they knew each other?

MR. DICKINSON: Yes; before they knew they would stand up together and keep up the prices on the public, and before they found out that they would deal honestly with each other in that respect; after that they were willing to dispense with the guarantee fund?

THE WITNESS: Judge, that is your testimony, not mine.

By MR. DICKINSON:

Q. Now, Mr. Temple, taking both of these associations, the plate and the structural, I understand you to say in respect to both of them that in 1904, some time in 1904, they were discontinued or disbanded, and that no payments were made after that?

A. No penalty payments were made after that. Of course it took money to run even the statistical association, and whenever the treasurer needed money to pay the salaries of the commissioner or rent, or any other expenses, he would assess each member of the Association an amount sufficient to meet the petty expenses of maintenance of the organization, and then he paid the expense accounts from that.

Q. And those were paid how long?

A. They were paid until 1906, when the statistical associations were dissolved.

Q. Mr. Temple, are you positive,—that is to say, are you speaking of your own knowledge, and in that way affirmatively,—that there was no guarantee fund or no payments toward a guarantee fund under the Plate Association?

A. No; I think I said in my original testimony that, to the best of my recollection, there was no guarantee fund put up in the Plate Association, and the reasons for it that I gave were the very reasons that were brought up as to why it was unnecessary.

Q. I understand that; but now I am asking you whether you speak as of your own knowledge, whether you are willing to state positively?

A. I would not state positively, under oath, that there was not a guarantee fund put up; but my recollection and belief is that there was not.

Q. You would not have handled the fund, would you?

A. Oh, no.

Q. Who would have handled it?

A. The treasurer, Mr. Willis L. King.

Q. Such a fund might have been paid in and you not have known it?

A. It might have been paid in without my knowledge, because it would not have been a part of my statistics.

Q. And it is not a matter that fell necessarily within the administration of your office?

A. No, sir.

Q. In regard to this association which you have described as a fangless dog, or a toothless dog, or a dog without teeth, after 1904, you did not take much interest in it after that, I believe?

A. No, sir; it was too easy.

Q. How many of those meetings did you attend? Do you recollect?

A. No; as I testified, probably half. Perhaps more than half, but not much more than that.

Q. Could you, in point of number now, state approximately how many you attended, or are you just speaking generally when you say you attended about half?

A. I am just speaking generally, for the reason that I was away a good deal of the time. Of course I knew what was going on, because I got the minutes of each of the meetings.

Q. That is to say, you knew what the minutes showed?

A. I knew what the minutes showed; and the minutes had what happened.

Q. You were not there?

A. I was not there for perhaps more than half of them.

Q. I am speaking of those at which you were not present. You do not know that the minutes showed everything that happened, of your own knowledge, of course?

A. Oh, no; I was not there.

Q. So you do not mean to say that the minutes showed

everything that transpired at the meetings at which you were not present?

A. No.

Q. You said some of those meetings were monthly, or about monthly, and some were subject to call upon the part of the commissioner, or upon the part of a stated number of members, and so forth. Have you any distinct recollection as to the number of those meetings, at all, or is it very generally that you are speaking when you say you attended about half of them?

A. Very generally, for the reason that the meetings gradually fell off in frequency as the time went by. At first they would meet perhaps at 60 or 90 day intervals; and then there would be, towards the latter part of it, as much as six months elapse without their getting together.

Q. That is to say, at which you were not present?

A. No, at which meetings were held, because while I was not present at every meeting, I was kept in close touch through my office with all those meetings.

Q. You said you were absent part of the time. Where were you during those absences?

A. I was in Florida some of the time and in California some of the time.

Q. What periods would you spend in Florida and what length of time would you spend in California; would you be some months at a time in those places?

A. Yes, and I have come clear from California to attend one of those meetings; when meetings were important I was always there; if there was anything out of the ordinary routine.

Q. What character of meetings were of such importance as to call you all the way from California?

A. Suppose, for instance, they were to take up the question of abandoning the associations altogether, then I would think that it was desirable to be there.

Q. How often did they take up the question of abandoning it?

A. They took it up tentatively once or twice, and took it up finally once.

Q. How many times did you come from California on such missions as that?

A. Once from Florida and once from California.

Q. At other periods, you were away for a long time in both of those places?

A. Yes; maybe five or six months at a time.

Q. Do you undertake to say during those five or six months that you now can recall what meetings took place of those associations?

A. During that time?

Q. During the times of those periodical absences extending over five or six months?

A. Of course I could not testify as of my own knowledge what took place at a meeting that I did not attend.

Q. Or as to what meetings took place, either?

A. Yes, I am certain as to the meetings that took place, because a meeting of that kind could never take place without my secretary or myself being there, and my secretary would always notify me of the meetings and of the proceedings at the meetings.

Q. Can you give now from memory, and do you recollect from memory what meetings took place and what notifications you got, or of the number of meetings during those periods of your absence?

A. No, that would be impossible, of course, unless something took place that was of an unusual character and would fix my attention on it.

Q. What I am getting at is, can you from memory state with any degree of approximation what number of meetings took place during your absence?

A. No, sir.

Q. When was the plate pool first organized, the first meeting that you attended?

A. It was in 1900, and I could not give you the exact date, although that is a matter that is of record and you can find it, but I think it was the latter part of the year 1900; I am not sure.

Q. Was that the first meeting or the first meeting that you recall being present at?

A. That was the first meeting that the plate pool ever had. I was present at the first meeting of the plate pool. I was not present at the meetings leading up to the formation of the plate pool. I never had anything to do with the organization of these pools.

Q. That is to say, the first meeting after it became an organization?

A. That is the idea.

Q. And you were not at the meetings preliminary to that and leading up to it?

A. No, sir.

Q. Nor were you present at the meeting at which it was formed? It had been formed and become an association before you attended a meeting?

A. At the meeting of formation I was made commissioner of it, and notified, and then I took charge of the pool afterwards.

Q. Where was that meeting, do you know?

A. We had so many meetings and in so many different places—I am inclined to think that it was at the Holland House in New York.

Q. You could not give the month or the day?

A. No, I could not.

MR. LINDABURY: I am not sure the witness has said he could not give the month.

By MR. DICKINSON:

Q. Can you give the month?

A. No; the formation of the plate pool, I could not. I said I thought it was the latter part of 1900.

Q. For the year 1904 do you know what the rate was per pound of assessment for overshipment in the plate association? I will ask you if it was not one-tenth of one cent.?

A. I was going to say, my impression is it was $2 a ton. We started originally with $7 a ton in the structural steel association, the idea being to have the rates for penalty and bonus equal, as near as possible, to the profit per ton on the product, but they gradually decreased the rate from time to time until my impression is that it was down to $2 a ton in 1904, and even that money was not distributed.

Q. That would be one-tenth of a cent per pound, would it not?

A. That would be one-tenth.

MR. DICKINSON: That is all.

REDIRECT EXAMINATION

By MR. LINDABURY:

Q. Mr. Temple, did any of the officers of the pooling associations receive salaries?

A. I do not think any official ever drew any salary except the commissioner.

Q. That was yourself?

A. Yes, sir.

MR. LINDABURY: That is all.

CHARLES MACVEAGH,

called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. SEVERANCE:

Q. Where do you live?

A. New York City.

Q. What is your profession?

A. Lawyer.

Q. How long have you been a member of the legal profession?

A. Since 1883.

Q. What professional connection, if any, have you had with the United States Steel Corporation?

A. I have been General Solicitor of the Corporation since its formation.

Q. Mr. MacVeagh, some of the witnesses in the case have mentioned the fact that there came to your attention along in 1908 or 1909 the existence of certain wire pools, so called; do you recall that fact?

A. I do.

Q. Who, if anyone, brought the matter to your attention?

A. Judge Gary.

MR. DICKINSON: I want to except to whatever passed between Judge Gary and Mr. MacVeagh, as irrelevant.

MR. SEVERANCE: I was not going to follow that up at all.

By MR. SEVERANCE:

Q. Can you fix about the date that that matter was brought to your attention?

A. It was during the year of 1908-09; exactly what date I cannot remember.

Q. Did any other person than Judge Gary call upon you or talk to you about the matter, any other person connected with the Corporation?

A. Under Judge Gary's instructions Mr. Baackes called upon me.

MR. DICKINSON: I except to that as irrelevant and incompetent.

By MR. SEVERANCE:

Q. Did you have any conversation with Judge Gary before Mr. Baackes called on you or after?

A. I had one before and I had one after.

MR. DICKINSON: Without interrupting Mr. MacVeagh, suppose I enter a general and continuing exception to all that passed between Mr. MacVeagh and any officer or employe of the United States Steel Corporation as irrelevant and incompetent.

MR. SEVERANCE: Very good.

By MR. SEVERANCE:

Q. Will you state what conversation you had with Judge Gary relative to this matter before Mr. Baackes called on you?

A. Judge Gary sent for me to come in and see him in his office, and he told me that he had had an interview with or communication from someone who claimed that the American

Steel & Wire Company was in a pool. He told me that he didn't believe it, but he wanted me to investigate it. I asked him if he would kindly instruct somebody from the American Steel & Wire Company to come and see me, and he said he would. He told me he wanted me to go to the bottom of it. That was all of that conversation that I remember.

Q. He told you to go to the bottom of it?

A. Yes.

Q. Did he in that conversation say anything as to what he wished to have done in case you found such pool did exist upon such investigation?

A. I do not think so, but it was understood between us that if there was any such pool, it must be abolished. I understood he had given orders to the people to get out of all pools; he did not approve of them. I do not think he said anything definitely at that conversation about it.

Q. How long after that was it you had this call from Mr. Baackes?

A. I think a few days after that.

Q. What did Mr. Baackes say when he came, and what did you say to Mr. Baackes.

A. He came into my office and said, "I am here at your mercy, Mr. MacVeagh. I have been sent here by Judge Gary to do exactly what you tell me to do." He said, "I am in a pool." I said, "Frank, you must get out of that." He said, "Well, I will if you say so, but I have been advised that it was legal, that it was not a pool contrary to law." I said, "If that is so, of course you will not have to get out of it, if it is perfectly legal," and I said, "Who advised you?" And he said, "Mr. Jackson." I said, "I would like to know Mr. Jackson's reasons for that." And he said, "I will get Mr. Jackson over here to talk to you about it"; so either that day or the next, I cannot recall which, by appointment through Mr. Baackes, Mr. Jackson came over to my office, and we spent some hours at all events talking the matter over, he giving me his views.

MR. DICKINSON: I object to all that passed between Mr. Jackson and Mr. MacVeagh, my exception did not cover that, as irrelevant and incompetent.

THE WITNESS: (Continuing) At the close of this long conversation I said to Mr. Jackson, "I am not convinced that your ideas are right about this, and I am still of the opinion that this Association is contrary to the Sherman law and is illegal."

By MR. SEVERANCE:

Q. What was Mr. Jackson's opinion as expressed to you in that interview as to whether it was legal or illegal?

A. His opinion was decidedly to the effect that it was legal, as expressed to me.

Q. He was a member of the bar of this city, was he not?

A. Yes.

Q. A member of a law firm?

A. I understood so.

Q. Had you ever met Mr. Jackson previous to this interview?

A. Never.

Q. Well, following this meeting with Mr. Jackson, which came to the conclusion, as you have stated, did you see Mr. Baackes again?

A. I did, that same afternoon.

Q. What did you do or say at that time?

A. Mr. Baackes asked me what the decision was, and I said, "It is that you must get out of this pool." We were then talking about the horseshoe pool, as I recall. He said, "At once?" I said, "Immediately."

Q. Was there in that conversation anything said about other pools?

A. I then said to him, "Are you in any other pools?" No, I am inclined to think he said to me, "Well, I am in some other pools"—not in answer to my question, but voluntarily to me. That is my present recollection. I said, "Are they similar to this?" He said, "Yes." I said, "Who is managing those associations?" He said, "Mr. Jackson, most of them." I said, "You must get out of all of those at once." He said, "Can't we have time to close them up?" He said, "If we withdraw it will dissolve these pools." I said, "I can't help that. Judge Gary's instructions are clear and

definite, to follow what I tell you to do as to the legality of these things; and I am satisfied they are illegal. You must get out of them at once."

Q. Did you have any further conversation with Judge Gary on the subject at that time?

A. I did. I reported to him either that day or the next, and told him what I had said to Mr. Baackes, and he said, "That is exactly what I wanted you to do, and what must be done."

Q. There was some testimony given relative to the dissolution of certain associations in the year 1904. Judge Gary testified relative to having referred those matters to counsel. Were you the counsel to whom those were referred?

A. I was not.

Q. Were you cognizant of those matters?

A. I was not.

Q. They were not brought to your attention?

A. They were not brought to my attention. I think they were referred to special counsel.

Q. Mr. MacVeagh, you stated a moment ago, relative to your conversation with Mr. Baackes, that he must get out of these pools, that Judge Gary's instructions were very positive in the matter——

MR. LINDABURY: Very clear and definite.

By MR. SEVERANCE:

Q. (Continuing) Very clear and definite—very positive I think was the word used. Was that the fact? Were those Judge Gary's instructions?

A. Well, Mr. Baackes came in and said to me—I do not think I amplified that quite sufficiently—he said "Mr. MacVeagh, I am in your hands. Judge Gary has told me to tell you about anything that I am connected with in the nature of pools, and that if you say I am in any pools that are illegal, I must get out of them immediately." That was the way Mr. Baackes came into my room.

MR. SEVERANCE: That is all.

CROSS EXAMINATION

By Mr. Dickinson:

Q. Mr. MacVeagh, you say that you and Mr. Jackson discussed the legality of these pools and his position was that they were legal?

A. Yes, sir.

Q. In that connection, did he state to you any of the operations of the pools as involved in this letter which I will read to you, Government Exhibit No. 14, Volume I, page 137:

"New York, May 14, 1903.

Bryden Horse Shoe Company,
Catasauqua, Pa.

Gentlemen:

IN RE GOVERNMENT BIDS.

Referring to the Government inquiry for No. 2, 3 and 4 Steel Horse Shoes and 1, 2 and 3 Mule Shoes for delivery at Jeffersonville, beg to say that I have authorized in this case the American Steel & Wire Company to make the lowest bid. If you desire to put in figures you may bid as follows:

Nos. 2, 3 and 4	Steel	Horse	Shoes	$3.51 per keg
" 1,	"	Mule	Shoes	3.75 " "
" 1,	Iron	"	"	4.00 " "
" 2 & 3,	Steel	"	"	3.51 " "
" "	Iron	"	"	3.75 " "

These are to be the delivered prices at Jeffersonville, and are not subject to any further discount or rebate. This order has been given out in accordance with the resolution recently passed regarding Government business.

Yours very truly,
E. E. Jackson, Jr., Supervisor,
Per Saml. J. Bailey."

Did he contend to you that such practice as that was legal?

Mr. Lindabury: Is your question as to whether they took all that and read it?

MR. SEVERANCE: Yes; your question is as to whether he called his attention to that.

MR. DICKINSON: No. I call your attention to it.

MR. LINDABURY: Let the question be read.

(The stenographer repeated the question.)

THE WITNESS: He did not mention that letter.

By MR. DICKINSON:

Q. I did not ask if he mentioned the letter; I asked if he stated any of the operations of the pools covering any such transaction as is involved in that letter to which I call your attention.

A. Not to my recollection. He did not go into any such details as that.

Q. I call your attention to another letter, from Volume I, transcript of record, page 249:

"K. G. Roebling, Esq.,

"John A. Roebling's Sons Company,

"Trenton, N. J.

"Dear Karl:

"Yours of the 27th inst. at hand enclosing letter from your Chicago House relative to some ass who is talking too much about the Copper Wire Association matters.

"It is the same old question. The only thing I can guarantee is that, as far as this office is concerned, we do not talk outside about our dealings or about our personal business. If I were able to control the talk of all the members of the various associations that we have here and to impress upon them the fact that the only motto is 'Addition, division and silence,' I would be a much wiser man than I am now.

"As to how the leakage can be stopped, I am frank to say that I don't know. I herewith return the letter from your Chicago office.

"Yours very truly,

"E. E. JACKSON, Supervisor."

Did he defend the associations whose actions were illustrated by such a motto as "Addition, division and silence," and say that they were legal?

A. That is a difficult question to answer. He defended this association that we were talking about, but no mention was made of that letter nor was any reference made to the phrase to which you refer.

Q. Did he tell you that they were fixing prices?

A. He told me that the association was fixing prices, I think, yes.

Q. And that all of the members were selling at a common price?

A. I do not know that he said that.

Q. Did he go into details to show you what the Association was doing, or were you discussing the general law of the proposition?

A. No, sir. We were discussing the general legal proposition of the Association formed by different persons in the same business who met together and entrusted their business to a large extent to a supervisor, and I understood Mr. Jackson to be that supervisor. The arguments which he advanced in favor of its legality were such that I could not coincide with him, could not approve, and I dismissed them from my mind. Exactly what those arguments were I cannot recall now. I know at that time I did not think they were well grounded.

Q. At the time you and he were conversing he was an employe of this association was he not?

A. I understood so.

Q. And getting a large sum of money annually for what he was doing?

A. That I knew nothing about.

Q. You did not understand that he was being employed as a lawyer upon whom any of your companies were relying for legal advice, and who was retained as counsel to give advice?

A. I understood they were relying upon his advice as a lawyer.

Q. That he was employed as a lawyer?

A. That was my understanding. I understood all these companies together had come in and had employed him as their lawyer to form this association and give them legal advice concerning it.

Q. Did you understand that any of your companies had taken his advice as counsel?

A. Yes.

Q. Disassociated from the question of his being employed by the association and deriving large profits himself, he, as a counsel learned in the law, upon the mere question of the legality of the transaction?

A. Why, undoubtedly I did. Otherwise I would not have spent a whole day talking to him on a legal basis.

Q. How did you get that understanding?

A. Because I was told by Mr. Baackes that they had a lawyer who had advised them that this Association was legal, and I said "Produce your lawyer and let him talk to me, and if he can convince me his proposition is sound I will let you go on with it. If he cannot, I won't."

Q. Did you understand that before he was employed by the Association and became interested in a monetary way, that your companies employed him as a lawyer here to give advice as to the legality of that association before it was formed?

A. I did not so understand.

Q. You were general solicitor of the Steel Corporation?

A. May I finish my answer?

Q. Certainly.

A. I did not so understand, but I did understand that he had come to them with a proposition which he as a lawyer said was entirely sound and well grounded and could not be attacked legally, and he giving his advice as a lawyer to that effect, they joined with the other companies in accepting that advice as a lawyer and going in with him on that proposition.

Q. You were general solicitor of this Corporation?

A. Yes, sir.

Q. A salaried officer of the Company?

A. Yes.

Q. Did they have any other members on their legal staff?

A. A great many.

Q. So far as you know, did any of those companies go to their regularly employed counsel, such as you say these others were, and take their advice as to the legality of these associations before they went into them?

A. Not before they went into it.

Q. And never until they were discovered to be going along, and until instructions were given in the way you have explained for them to get out?

A. They never came to me until that time.

Q. Do you know of anybody of the legal department of the United States Steel Corporation or any of its regularly accredited counsel to whom they went at any time for advice before you sent for Mr. Baackes or Mr. Baackes came to you in accordance with the instructions of Judge Gary?

A. That is rather a broad question.

Q. I am asking you what you know about it.

A. We have Division counsel in Illinois, in California, in Pennsylvania, and in a great many other States, all of whom are under me, and all of whom give advice to the subsidiary companies, when they come and ask for it. I should hesitate to say that they had not gone to these Division counsel and asked for advice about it.

Q. Have any of these division counsel ever reported to you that on as momentous a matter as that they had given advice that such associations as that were legal?

MR. LINDABURY: You mean did they report before this suit was brought?

By MR. DICKINSON:

Q. I mean has anybody connected with the regular legal staff of the United States Steel Corporation reported to Mr. MacVeagh, or has it come to your knowledge that any of them gave advice in regard to the legality of these pools before any of these subsidiaries went into them, or while they were in them, and prior to the time when Mr. Baackes came to you?

A. No, sir.

Q. Did you have any information, Mr. MacVeagh, before Judge Gary sent for you, that the American Steel & Wire had been in any pools or associations?

A. Not the slightest.

MR. DICKINSON: That is all, Mr. MacVeagh.

(Whereupon an adjournment was taken until to-morrow, Wednesday, June 25, 1913, at 10:30 o'clock a. m.)

EIGHTY-FOURTH DAY.

EMPIRE BUILDING,
71 BROADWAY, NEW YORK CITY,
WEDNESDAY, JUNE 25, 1913.

Before Special Examiner HENRY P. BROWN.

Present on behalf of the United States, MR. DICKINSON and MR. COLTON.

Present on behalf of the defendants, MR. LINDABURY, MR. SEVERANCE, MR. BOLLING and MR. REED.

LEWIS CASS LEDYARD,

a witness called on behalf of the defendants, being first duly sworn, testifies as follows:

DIRECT EXAMINATION

By MR. LINDABURY:

Q. Mr. Ledyard, you are a member of the Bar of the Supreme Court of New York, I believe?

A. Yes.

Q. You have been practicing in New York ever since you came to the Bar, have you?

A. Yes, sir.

Q. You were a partner, in his lifetime, of Mr. James C. Carter, were you not?

A. For a great many years.

Q. What was the firm name at that time?

A. When I first became his partner it was Scudder & Carter. That was when I came to New York in 1875. It afterwards became Carter & Ledyard. Then Mr. Rollins, the Surrogate, came into our firm, and the name became Carter, Rollins & Ledyard for a short time. Then it became Carter & Ledyard, and continued so for many years, until Mr. John G. Milburn was taken in. Then the firm name was Carter,

Ledyard & Milburn. It so continued until I retired from it a year or two ago.

Q. Have you ever been attorney for the United States Steel Corporation?

A. Never.

Q. Have you been attorney for the firm of J. P. Morgan & Company?

A. Never.

Q. Or Mr. J. P. Morgan?

A. No. I drew his will not long ago. That was a friendly service, not a professional one, either. With the exception of that I never did any professional business for him of any kind.

Q. Were you ever attorney for Moore & Schley?

A. Never.

Q. Was your attention called to the financial situation of Moore & Schley in the autumn of 1907?

A. Yes.

Q. By whom?

A. Colonel Oliver H. Payne.

Q. Was he a client of yours?

A. He was; had been for many years.

Q. Do you remember what time this was in the autumn?

A. It was in October. According to my best recollection it was in the week commencing October 22. At all events it was in the week when the run on the Trust Company of America started, and the same week in which the Knickerbocker Trust Company closed. That is my recollection. I testified before the Stanley Committee that I thought it was in the last week of October; that was the last complete week in October, the one to which I referred.

Q. Did Colonel Payne ask you to see Mr. Schley?

A. No, he did not.

Q. Did he give you any information as to the condition of Moore & Schley?

A. He told me he was a large creditor of theirs, and that he was very much concerned about their condition. Shall I go on?

Q. Yes; you may go on, if you will give the substance of the information.

A. He said they were very much extended in loans and that they had a great quantity of Tennessee Coal & Iron stock, which was regarded as pooled or pegged stock, and therefore had become unavailable for collateral and was viewed by lenders with suspicion.

He said that the only way that he could see in which Moore & Schley could be relieved would be by a sale of the Tennessee Coal & Iron Company to the United States Steel Corporation, and that he had suggested to Mr. Schley that he should see me—that Mr. Schley should see me, and ask me——

Q. Before you go on with that tell us what the term "pegged" in connection with stock means, as it is used here in New York.

A. It would mean a stock which had only a fictitious market; I do not mean fictitious in any wrong sense, but no real market; a stock only held by a very few persons, who could fix the price on the market at what they pleased, and a stock in which the general public were not interested at all, and therefore a stock which was not the subject of any general transactions, so that in the event of a block of such a stock being thrown upon the market there would be no persons dealing in it who would take as purchasers and afford a market for it.

Q. How soon after this interview with Colonel Payne did Mr. Schley call upon you?

A. I had a telephone late one night, nine or ten o'clock, I think, at my house, from Mr. Schley, on the evening of Friday of the following week, I think that Friday was the 1st of November, asking me to come to his uptown office at 747 Fifth Avenue.

Q. Before you go on, what do you mean by the following week? The next week but one, or the Friday of the week that you had the interview? About how many days was it after your interview with Colonel Payne?

A. May I look at a calendar for a moment?

Q. Yes; you may, certainly.

THE WITNESS: (After referring to calendar) The week in which Colonel Payne spoke to me was, according to my best recollection, the week commencing October 21, Monday, October 21.

By MR. LINDABURY:

Q. Sometime during that week?

A. That Colonel Payne spoke to me, yes, and that week would have ended on Saturday, October 26th, and Friday night would be Friday, November 1st.

Q. Did you have any interview with anybody in the meantime with regard to the subject matter of your conversation with Colonel Payne?

A. I think not.

Q. Did you go to see Mr. Schley?

A. At once.

Q. At his Fifth Avenue office that you have alluded to?

A. Yes.

Q. Whom did you meet there?

A. I met Mr. Schley, whom I knew very slightly, his partner, Mr. Watson B. Dickerman, whom I had known very well, and a gentleman who was, I think, the bookkeeper of Moore & Schley, Mr. Tierney.

Q. How long were you there that evening, Mr. Ledyard?

A. I must have remained there several hours that evening. Perhaps until one o'clock; I could not tell exactly.

Q. Will you tell us as fully as you are able to recall what took place and what conversation you had?

A. Of course I am unable, six years later now, to state with definiteness or particularity what was said by any one person among the several persons present. I can give only the conversation as a whole; what Mr. Schley said or what Mr. Dickerman said or what Mr. Tierney said I could not very well separate.

Q. But each talked in the presence of the others?

A. They all talked together. I was told that Messrs. Moore & Schley owed very large amounts of money for loans which had been made to them upon collateral, what are ordinarily called collateral loans, that the amount of those loans was, I think, $33,000,000 or $35,000,000, that is my recollec-

tion; that they were placed in various cities; some were in New York, some in Chicago, some in Boston and some in Philadelphia, and that they were about at the end of their rope in available resources; that they had this large amount of Tennessee Coal stock which was looked at askance by lenders because it was regarded as a pooled or pegged stock, and they also had a number of other securities in their loans which were not first class standard securities, and Mr. Schley spoke to me about Colonel Payne's suggestion that he should ask me to see Mr. Morgan to ascertain whether the Steel Corporation would buy the Tennessee Coal & Iron. I did not go through their books. Mr. Tierney had a lot of statements with him at that time, but I am not a bookkeeper and very likely I would not have understood them if I had looked at them, but I went over with them the condition of the house with reference to their loans, to see what their necessities were and see what could be done in the event that a sale of the Tennessee Coal & Iron to the Steel Corporation could be effected, and Mr. Tierney told me that in his judgment they would be able so to arrange their loans that they would have sufficient margin in their box to meet emergencies if such a sale could be effected. I asked them what price would be necessary to make the sale in order, in their judgment, to bring about a result that would render them fairly safe, and I was told that nothing less than par for Tennessee Coal & Iron stock would effect their purpose or bring about that situation. I remained there, as I say, for two or three hours, and then I went home, after telling them, probably, that I would see Mr. Morgan in the morning.

Q. Was there any reason given at that interview for the suggestion that the Steel Corporation might purchase the Tennessee Coal & Iron stock?

A. Not at that interview; there may have been in the interview that I had before with Colonel Payne when he made the suggestion to me.

Q. Perhaps you had better give us that before we go further.

A. Colonel Payne had said in the first interview that it would be a natural acquisition for the Steel Company to make

as an extension of their business, and that was why he thought that they might entertain it favorably.

Q. Was anything said either at that interview with Colonel Payne or the one with Mr. Schley as to whether there was any other possible purchaser for that stock?

A. Not that I remember.

Q. Did you see Mr. Morgan soon after this interview?

A. I went to see him early the next morning at his house.

Q. Did you have a talk with him on the subject of Moore & Schley's condition?

A. Either at his house or at the library next door to it.

Q. Please state it.

A. I had a talk with him. I told him exactly what Colonel Payne had said to me, and what Mr. Schley had said to me the evening before. I told him what the situation of Moore & Schley was, as far as I had got it, what the amount of their loans was, and what the character of their collateral was in large part, and that they had said to me that they felt they had gotten to the end of things and must have some relief, otherwise they would fail. Mr. Morgan expressed himself as greatly concerned. He said the failure of such a house as Moore & Schley would bring about results that would then disturb the condition of things in such a way that nobody could forecast.

Mr. Dickinson: I object to what Mr. Morgan said as irrelevant and incompetent.

The Witness: Shall I continue?

By Mr. Lindabury:

Q. Yes.

A. He said it was one of the most serious things that had come to his knowledge, and that he would at once send for Judge Gary and Mr. Frick, and he ordered some one to telephone for them, and he came back and he said to me that Judge Gary was coming right around to the library.

Q. Had you finished that interview with Mr. Morgan?

A. I told you that I told him all the story that these gentlemen had told me the night before.

Q. I understand that. I did not want to interrupt your

narration of the interview you then had with him. I wanted to ask you another question when you had finished with that.

A. I do not remember now. You may suggest something, but that is as much as I now remember.

Q. I think at this point I would be glad to have you tell what the financial condition at the time was which Mr. Morgan alluded to in that conversation?

A. Well, this conversation was as I said on Saturday, the 2nd of November, according to my best recollection of the dates. In the preceding week the country had fallen into the throes of a veritable panic. A large number of financial institutions were in difficulty. Some had failed. The Knickerbocker Trust Company, a very large trust company of New York, had closed its doors, suspended payment. The Union Trust Company of Providence had closed its doors. The Pittsburgh Stock Exchange had been closed. A very serious and aggravated run was in progress on the Trust Company of America, another very large trust company in New York. One or two banks in Pittsburgh had failed. The New York Clearing House had resorted to the expedient of the issue of clearing house certificates. Credit had been suspended. It had become practically impossible to borrow money anywhere. Money rates, loaning rates on the Stock Exchange of New York were quoted at from 75 to 100 per cent., and the time was one of very extreme and almost unprecedented financial distrust. I do not think I could say more than that about it.

Q. Were any other trust companies than the Trust Company of America experiencing trouble?

A. Yes, the Lincoln Trust Company was also in trouble and had to be helped, and at the time that I saw Mr. Morgan I had already been in consultation with him quite actively with reference to measures of aid to some of these institutions here.

Q. Were you present when Judge Gary arrived in response to Mr. Morgan's call?

A. Yes.

Q. Did he come alone?

A. He came alone. Mr. Morgan reported to me that he had received an answer from Mr. Frick's house that he was

out driving, and had left word for him to come as soon as he came back.

Q. And did he come later?

A. He came later.

Q. Did you have any conversation with Judge Gary when he arrived?

A. Yes, sir.

Q. You may state it.

A. That conversation was in the presence of Mr. Morgan, one of the first conversations I had with Judge Gary, and how much he said and how much I said I do not now remember, but between us we told him the whole situation as I had explained it to Mr. Morgan.

Q. You may tell what anybody said with regard to the proposition, either Judge Gary or Mr. Morgan or yourself, if anything was said?

A. There was another conversation at which I was present when Mr. Frick was there, so that I cannot distinctly specify between the conversations. The matter was gone over when he arrived.

Q. You need not mind distinguishing them if you cannot do it.

A. I cannot do it.

Q. Mr. Frick came and then there was another conversation?

A. Partly with him and partly with Judge Gary, after he came.

Q. You need not distinguish between them.

A. And the situation of Moore & Schley was explained to those gentlemen. Judge Gary expressed himself as very averse to making the purchase. I had said to them, as I understood the situation, nothing less than par for the Tennessee Coal stock would be sufficient to pull Moore & Schley out of their difficulties and give them a fair chance of safety. Judge Gary said that he did not think it was worth that, or anything like it, for the Tennessee stock. He said he did not think that that stock was worth over 60 or 65, as I remember the figure that he put upon it, and I told him I did not think it was a question of what it was worth, if they were going to do this

thing, but it was a question of how much it was necessary to pay if they wanted to save Moore & Schley and to avoid the very serious results that would accompany or follow upon their failure. He was quite persistent in his expressions of the value of the stock not exceeding 60 or 65, and I remember saying to him, "Well, Judge Gary, if you will wait, I do not doubt you can buy it at twenty-five cents on the dollar, but I do not believe when that time comes, if this situation is not saved, that the Steel Company will be buying anything at any price."

Q. If you will stop there, I would like to go back and ask you something that I forgot a moment ago.

Did Mr. Morgan express any opinion with regard to the proposition, or state his position with regard to it in your conversation with him before he called up Judge Gary, as to whether he would recommend it, or what he would do?

A. No; he said all he could do would be to lay it before these gentlemen who knew about the business. If I can go ahead for a moment, I will make that a little more clear.

Q. Go on in your own way.

A. On the next day, Sunday, when I had a conference with him—not a conference, but I was sitting talking with him in his library about other matters—he then said, "I have done what I can. I never have been more concerned over a situation than I am over this. I think this is the most serious thing we have had to meet in this panic yet. I cannot urge upon the Steel Company to take this property. I have done what I can. I have put it before them. I hope they will do it, because I hope for the safety that that will bring in saving the situation." He said: "I do not think I have a right to urge them or to force it upon them, or attempt to do so. That is my position. They must deal with it as they see fit. I have gone as far as I can." That he said to me on Sunday.

Q. What reason, if any, was given by you or by Mr. Morgan to Judge Gary and Mr. Frick on Saturday at the interview, in favor of entertaining the proposition?

Mr. Dickinson: I except to that as irrelevant.

The Witness: The only reason that I gave, Mr. Lindabury, I will say very frankly, was to save Moore & Schley. I

went there professedly in the interest of Colonel Payne, who was a very large creditor of Moore & Schley, to save that house. They knew that that was what I went there for. I had said it to them. I did not explain to them that there were no other people who would buy Tennessee Coal stock; I thought that was apparent.

By MR. LINDABURY:

Q. I am only trying to get the whole information.

A. I went there simply and frankly to tell them what my interest in it was. I told them that the suggestion had originally come from Colonel Payne to Mr. Schley, and that he had finally sent for me and asked me to go to Mr. Morgan.

Q. Did Mr. Morgan say anything to them in your presence as to the situation, or call for or invite action on their part?

MR. DICKINSON: I except to that as irrelevant and incompetent.

THE WITNESS: Not a great deal, Mr. Lindabury. It was true of this and true of the subsequent interviews at the library, that when they wanted information from me I gave it, but the conferences that took place between Judge Gary and Mr. Frick and Mr. Morgan and others of the finance committee of the Steel Corporation that came there, took place without my being present.

By MR. LINDABURY:

Q. I understand that.

A. Whatever Mr. Morgan said to them he said in those conferences as a rule. There was no discussion before me as to the merits of the proposition as to whether they should do it or not, and when I had gotten through, each time, with saying what I had to say, I either retired, or they retired into the other room that Mr. Morgan generally used for his sitting room.

Q. Did any other members of the finance committee of the Steel Corporation come in that day, Saturday, or do you not recall? It is not of account, if you do not remember.

A. If you were to put two days together, I could answer.

Q. Yes; I know you could, but I do not mean to do that.

A. The Saturday and Sunday.

I am under the impression, but I could not state it positively; I am under the impression that Mr. Ream did, Mr. Norman B. Ream.

Q. Were you at Mr. Morgan's library on Sunday?

A. Yes.

Q. When did you leave on Sunday, late or early? I do not mean to ask for the hour.

A. I was in and out all day, until quite late. On Sunday I was there from the morning, with some intermissions, until, I think, five o'clock Monday morning—all night.

Q. Did Judge Gary come in on Sunday?

A. Yes.

Q. And Mr. Frick?

A. I think so; I know it; yes.

Q. And do you remember that other members of the finance committee came in that day?

A. I did not know who the members of the finance committee were.

Q. I see. Very well.

A. I never have known, but I know that people identified with the Steel Corporation did come in there. Mr. Baker was there.

Q. Mr. George Baker?

A. Mr. George Baker; Mr. Norman B. Ream; Mr. Henry Phipps, Judge Gary——

Q. I think that is enough.

A. Mr. Frick.

Q. Yes.

A. I did not keep tab on who the others were.

Q. Of course you did not.

A. You know there were a vast number of people in there throughout this whole time on other matters.

Q. There were a hundred or more that day, were there not?

A. That day and that night. There must have been a hundred there at one time.

Q. Having their own interests——

A. There were all sorts of people to be helped; all sorts of directions in which aid had to be extended.

Q. Were many of the leading bankers of New York there that day, Sunday?

A. Mr. Baker was there, Mr. Stillman was there, and a number of gentlemen connected with the Trust Company of America—I am not sure that the whole of their board of directors was not in one room, and the board of directors of the Lincoln Trust Company in another. I think they were, that night.

Q. Were not most of the leading bankers of New York there that day?

A. Many, and trust company presidents. I remember a number of them.

Q. Just now I mean to ask you about the Tennessee Coal & Iron situation, and later on I will have something to ask you about the general situation. Was this matter of the proposed purchase of Tennessee Coal & Iron by the Steel Corporation taken up Sunday morning?

A. Yes.

Q. Was Mr. Schley there during that day or Saturday?

A. He was there Sunday, but whether he was there Saturday afternoon or not I do not know. He was not there Saturday morning when I went.

Q. Do you remember any alternative proposition being made to you by Judge Gary on either Saturday or Sunday?

A. I remember two of them.

Q. Give them in their order, if you can recall the order.

A. My idea in going there was to sell the Tennessee Coal & Iron stock for cash, but Judge Gary told me that that could not be done, that they could give us Steel sinking fund bonds for it at a price equivalent to cash. I went back to Mr. Schley about that, and Mr. Schley said he thought that would do, that that would pull him out. Then Judge Gary, I think it was on the Sunday, came to me and made the suggestion that instead of buying Tennessee Coal & Iron stock, the Steel Corporation should make a loan to Moore & Schley of, I think, five million or six million dollars. I told him I did not think it would do, but I would ask Mr. Schley what he thought about it, and I saw Mr. Schley and Mr. Schley said it would not do at all, that proposition of a loan to Moore & Schley

of a loan of five million or six million dollars would not at all put them in a situation where they could weather the panic, and I so reported to Judge Gary.

Q. Why did you think that would not do at all?

MR. DICKINSON: I object to that as incompetent and irrelevant.

By MR. LINDABURY:

Q. You said you did not think it would do, although you went to Mr. Schley with it?

A. I said to him I did not think it would do. Moore & Schley owed this very large amount upon collateral securities which they had pledged for their loans; a lot of that collateral security was of a character perhaps not as objectionable as Tennessee Coal & Iron, but still quite unavailable for loans in a time of stress like that. They had American Tobacco common among their assets; they had Guggenheim Exploration; they had Republic Iron & Steel. Now, if you took and exchanged Tennessee Coal & Iron for cash or its equivalent in Steel bonds, which were a stable and marketable standard security, you would get a very much larger amount available for them in their collateral standard securities or cash, if they converted it, than they would by a five million or six million dollar loan. That is what I understood.

Q. When Mr. Schley answered you that a loan of five million or six million dollars would not do at all, did he explain why it would not?

A. No, he said right off it would not do.

Q. Did you pursue the matter with him?

A. I did not.

Q. What next in the way of negotiations occurred?

A. I am talking about Sunday.

Q. Yes, we are still on Sunday.

A. Sunday night was a time of enormous stress there, with a multiplicity of things going on at the same time, a great many people to see about a great many things. I remember Mr. Frick coming in that night.

Q. Privately, that is, unaccompanied?

A. Unaccompanied by anyone else. He came up to where I was standing in one of the other rooms, and took me aside and said, "Now, Mr. Ledyard, if we do this thing it is for the purpose of saving the financial situation. That is what we are doing it for, if we do it." He had not said they would do it. "But I think we ought to—here are these trust companies in trouble, and if they fail a failure would bring about the same results as the failure of Moore & Schley would, and I think we ought to make our aid to Moore & Schley by taking this stock over conditional upon the safety of these trust companies being first secured." I said, "Mr. Frick, you are asking an impossible thing, that is not to be thought of for a moment. There are lots of people needing help here, and we have got to take them up one by one. We have got all the trust company presidents here to-night in the trust company situation, doing what we can about it. How that will work out I do not know, but you have got to take them up absolutely one by one and dispose of them. You cannot make one of these things conditional upon another." I remember one other thing that Mr. Frick said to me. I cannot locate the time or the moment.

Mr. Dickinson: I will except to that as irrelevant and incompetent.

The Witness: (Continuing) But it was at the library, and was after Judge Gary had been again saying that the property was not worth this price; and Mr. Frick and Judge Gary had been together talking with me when Judge Gary had been quite emphatic about its not being worth par, and they went off into the other room, and then Mr. Frick returned alone to me and he said, "Now, Mr. Ledyard, I know you very well, and I have confidence in you; I do not know whether this thing will be done or not, but is it your own judgment that nothing less than par will pull these people out and make them safe?" I said, "Mr. Frick, I do not think anything less will. Of course I have not been through their books, but I have tried to get at their condition, and my own judgment is that nothing less than par for the stock would make it worth while doing it."

And he said, "Very good, that is the end of the question of price for me." When Mr. Frick—this I think was Sunday night that I am about to say——

MR. DICKINSON: Are you going to state something Mr. Frick said?

THE WITNESS: Yes.

MR. DICKINSON: That is excepted to as incompetent and irrelevant.

THE WITNESS: But not because the question does not call for it?

MR. DICKINSON: No, because I think it is matter that is incompetent and irrelevant, what Mr. Frick said.

THE WITNESS: I think it was in connection with Mr. Frick's—I am not quite sure about that—I think it was in connection with Mr. Frick's suggestion that the saving of these trust companies should be made a condition of the acquisition of the Tennessee Coal & Iron by the Steel Corporation that I made a further suggestion to him. I said, "Mr. Frick, I can get three gentlemen to aid in this situation in this way." I had explained to him, as I have told you, what the situation would be, as it had been told to me; I explained to him that if this sale of the Tennessee Coal & Iron stock was effected then Messrs. Moore & Schley, as Mr. Schley and Mr. Tierney told me, could so manipulate and change and shift their loans that, as they represented to me, it would leave them with their loans margined I think at about fifteen or twenty per cent. margin, and that three or four, perhaps four million dollars of unused securities of fair quality would be left in their box, and I told Mr. Frick that was the condition that had been represented to me would follow upon this acquisition of the Tennessee stock, and then as a last thing to show him that it would be made a successful thing in case he had any doubt about it, a sufficiently strong financial situation to guard against further trouble, I said to him that I could get three gentlemen to arrange to put at Mr. Morgan's disposition, not Messrs. Moore & Schley's, but at Mr. Morgan's disposition, a fund of a million dollars each, to be held by him and used in his discretion to protect Moore & Schley and their loans; that these gentlemen would put up securities

with Mr. Morgan, securities of their own, upon which Mr. Morgan would give them each a credit for a million dollars in cash, to remain with him but to be used by him in aid and in ease of the situation of Moore & Schley.

Q. Wasn't that conversation about the three million dollar guaranty in connection with Mr. Frick's inquiry as to whether the doing of this thing would really save Moore & Schley?

A. I think it was, but I do not locate it; it is six years ago. I cannot locate what part of the day it took place.

Q. That is the day which would seem to fit?

A. I think it was.

Q. Was there any such arrangement as that made? I will finish that subject now.

A. It was.

Q. I will finish it now, since you have alluded to it.

A. That was carried out.

Q. And three million dollars put up as security?

A. No, securities for very much more than $3,000,000 were put up.

Q. I mean the equivalent of it?

A. And Mr. Morgan——

Q. (Interposing) Assumed the trust?

A. Assumed the trust.

Q. Was anything said on that Sunday about verifying the statement of Mr. Schley as to the Tennessee Coal & Iron stock among the assets of Moore & Schley, or as to the financial condition of Moore & Schley?

Mr. Dickinson: Are you asking for both or either?

Mr. Lindabury: That is the question. We will see what his answer is. I do not know.

The Witness: I knew on Sunday—your question embarrasses me because it asks if anything was said on Sunday. I knew on Sunday that such an examination had been ordered. Whether I knew on Saturday that it was going to be I do not now remember. I knew on Sunday that Mr. Joyce, a man in a confidential position in Mr. Morgan's office, and somebody from the Steel Corporation, I do not know and I never did know who, were going to Moore & Schley's and go over their affairs with a view of ascertaining what their condition was.

That Sunday night at the Library I saw Mr. Joyce in the hall of the library, and he was then waiting to see Mr. Morgan, and he told me he had been down there and had been over their books, and I said to Mr. Joyce, I told him what the situation was that Moore & Schley said would be the result of this deal if it went through, that is, that they would have their loans margined at I think 20 per cent., I am not sure of being accurate in that sum now, I think that was the amount, 15 or 20 per cent., that they would have $3,000,000 or $4,000,000 in their box of fair and available securities, and I asked Mr. Joyce if he thought that his examination of their affairs would verify that statement as being true, and he told me that he thought it would turn out that way.

MR. DICKINSON: I object to what passed between Mr. Joyce and Mr. Ledyard as irrelevant and incompetent.

By MR. LINDABURY:

Q. Were you present when he reported to Mr. Morgan?

A. No.

Q. You said he was waiting there?

A. He was waiting to see Mr. Morgan then; he told me so.

Q. Did you know of the contemplated trip of Judge Gary and Mr. Frick to Washington?

A. No.

Q. I think you have already said you stayed that night until five o'clock the next morning?

A. Five o'clock in the morning.

Q. Did you return to Mr. Morgan's office on Monday, I mean the library, on Monday?

A. Yes. I went there early Monday morning; I went home at five o'clock, I think it was. I ought to say, to make that clear, that while I did not know of the projected trip of Judge Gary and Mr. Frick to Washington I knew during that night after they had gone that they had gone, and Mr. Morgan asked me to come to his house as I left him. He asked me to come to his house at half past eight, and I went home and then I went back to Mr. Morgan's house at half-past eight.

Q. In the morning?

A. In the morning, and from the house I went over to the library to await a telephone from——

Q. (Interposing) Washington?

A. Washington.

Q. Did you receive any message during the morning from Washington?

A. We did not receive any message during the morning from Washington, but he heard from the office down town.

Q. To what effect?

A. Mr. Morgan told me that he had heard that the administration did not see any reason for interfering, or something of that sort. I would like to say that I have read over the report of my testimony before the Stanley Committee, and I think the stenographer erroneously took down the hour at which I said that report was received.

Q. What do you say now as to the time?

A. The printed report of the Stanley Committee says that I testified that it was before three o'clock. I think it was considerably earlier than three o'clock.

Q. Have you any definite recollection now as to the hour?

A. No.

Q. How much Tennessee Coal & Iron stock did Mr. Schley offer to sell in these negotiations?

A. I was never informed of the precise number of shares.

Q. Can you tell us whether or not it was the controlling—that is, a majority of the stock?

A. I understood it to be so.

Q. Was there at any stage any question of giving equal terms to the minority?

A. Yes.

Q. And what was said?

A. I remember Mr. Leonard Hanna being here on this occasion, as I saw him on two or three different days. I cannot say just which day this was, and he asked me if the minority stock would have the same terms, and I told him of course I supposed it would. I afterwards spoke to Judge Gary, I think, and he said that he understood that any stock that was offered, the minority stock, would be taken in upon the same terms. That was carried out as a matter of fact.

Q. As a matter of fact that was carried out?

A. Yes. In fact I know also that there were two gentle-

men that I spoke to about that and told them that at the time.

Q. Friends or clients of yours?

A. One was a client; the other was not. One was Mr. Oakleigh Thorne, whom I met by hazard on Fifth Avenue.

Q. He had been a client of yours, had he not?

A. Never.

Q. A friend, then?

A. I knew him and I had heard of him as a person who had some Tennessee Coal stock and was interested in it on his own account. I told him what arangement was being made, and that all the stock of the minority people would come in. One man I sent for who had been for years a client was Edward J. Berwind. I telephoned him to come to the library to see me on one of these days, and he came, and I told him what was in progress, and he said he would put his stock in at the same rate.

Q. Did you tell him that the minority——

A. I told him that the minority would be taken in at the same rate.

Q. Was Mr. Berwind a man who was likely to be in trouble or forced to sell a stock of that kind?

A. No, sir; he was a very wealthy man. I knew about his affairs at the time, and he was not in any trouble of any kind.

Q. When was the agreement concluded—you need not be particular about the day; I do not mean to ask the exact date.

A. Those gentlemen went to Washington Sunday night. Then they came Monday—Tuesday gave us a breathing spell, because it was election day. I think by Tuesday I can say it was regarded as settled. That is my recollection. We felt that it had to be done by Tuesday before encountering another day's market conditions on Wednesday.

Q. How was it carried out?

A. It was carried out in this way: It appeared that the Steel Corporation did not have on hand these sinking fund bonds in thousand dollar lots available for use in splitting up to be used in exchange for varied amounts of stock, and those bonds, coupon and registered, had to be certified and issued. My recollection is they were issued against one or

more registered bonds that were all then in existence that had to be broken up and smaller bonds, thousand dollar and other lots issued in their place, which had to be certified by the trustee. I think the trust company had to appoint a lot of extra vice-presidents to go to work and certify all these bonds; and they worked all night doing it. Then J. P. Morgan & Company arranged to let any holder of Tennessee Coal & Iron stock turn his stock in to them.

Q. That is J. P. Morgan & Company?

A. J. P. Morgan & Company, yes; they issuing to the depositor a negotiable receipt for the stock so deposited, which receipt was good for Steel bonds as soon as they could issue them; as soon as they could physically get the bonds to issue in exchange; so that if a man had stock that was held up in a loan, pledged, and could not get it out, he could direct his creditor to take the stock to J. P. Morgan & Company and give it to them and get from J. P. Morgan & Company a negotiable receipt representing the stock, which the creditor could hold, which receipt was redeemable in bonds as soon as they could be issued.

Q. Where were those bonds to be gotten?

A. At J. P. Morgan & Company.

Q. Did this involve any considerable work on the part of the house of J. P. Morgan & Company?

A. I should think it involved an enormous amount of work.

Q. Did they receive any compensation whatsoever for it?

A. None whatever. They did not want any, and received no compensation or commission. They put their service in for nothing.

Q. Did anybody receive any compensation or commission for anything he did in this connection?

Mr. Dickinson: Excepted to as irrelevant.

The Witness: Nothing.

By Mr. Lindabury:

Q. I am leaving out mere clerks——

A. I said nothing, because I did not think your question would cover a matter relating to myself.

Q. It did not.

A. It did not cover that.

Q. No.

A. Some time afterward I received, without making any charge to anybody, a recognition for what I had done.

Q. Would you mind telling us from whom you received that?

A. I received it from Mr. Schley—not as a fee, for I had not represented him—but he wrote me a letter thanking me very much, and saying how much he appreciated what I had done to save him, and he begged me to accept this, and I accepted it.

MR. DICKINSON: It was what the Roman lawyers called an honorarium?

THE WITNESS: It was purely that. I should not have mentioned it except that the other question was so broad that it might have been thought to include it.

By MR. LINDABURY:

Q. I am very glad I asked the question, but I did not mean to include that kind of service in it.

Mr. Ledyard, do you know whether Moore & Schley had a loan with J. P. Morgan & Company at this time?

A. Yes; they did, on Tennessee Coal & Iron stock.

Q. Do you know whether they had a loan with the First National Bank?

MR. DICKINSON: Would you mind asking the amount?

MR. LINDABURY: If he knows.

THE WITNESS: Quite a large amount; I do not remember now, Judge Dickinson, how large it was. I did know.

By MR. LINDABURY:

Q. Do you know whether they had a loan with the First National Bank?

A. Yes.

Q. Who was the president of that bank?

A. Mr. George F. Baker.

Q. Was he or not one of the three who put up a million dollars as a guarantee fund?

A. Yes; and he was Mr. Schley's brother-in-law besides.

Q. Do you know whether J. P. Morgan & Company called their loan or any part of it from Moore & Schley during this panicky period?

A. They did not. That is, they told me they did not.

Q. Have you found since you answered a few moments ago the amount of the Morgan loan?

A. No, I have not got it here.

Q. Somebody said you gave it to Judge Dickinson.

MR. DICKINSON: That was something else.

MR. LINDABURY: That is all right; Mr. Reed thought it was that.

By MR. LINDABURY:

Q. Do you know whether Moore & Schley had a loan with the Chase National Bank at that time?

A. I think they did.

Q. Do you know whether that was called or not?

A. Mr. Schley told me that none of his loans—that with J. P. Morgan & Company or the Chase Bank or the First National Bank, were called or criticized. In fact——

MR. DICKINSON: That is excepted to as hearsay.

By MR. LINDABURY:

Q. Go on.

A. In fact, he stated to me that Mr. Baker himself had also helped him personally.

Q. Outside of what we have been speaking about?

A. Yes.

Q. Did he tell you whether other creditors were troubling him?

MR. DICKINSON: Did who tell him?

MR. LINDABURY: Mr. Schley. I do not care for details.

THE WITNESS: I knew of a large amount of liabilities of Moore & Schley other than those comprised in the collateral loans of which I spoke. Their liability to Colonel Payne was very large; a number of millions.

Q. Was he being troubled by any of his creditors, either in criticism of his collateral or otherwise?

A. I do not know about that.

Q. I meant to ask about his statement; what was the trouble he complained of; why did he need help?

MR. DICKINSON: Objected to as incompetent and irrelevant and hearsay.

THE WITNESS: I have not yet told you what the situation was with Colonel Payne, his situation. Colonel Payne was a gentleman here who was not in business, who was retired; he was a wealthy man and a large investor, and he had a very large account with Moore & Schley, and he had a large number of securities of stable and substantial character that were desirable for collateral purposes, and he had loaned to Moore & Schley a large number of those securities, to a very large amount, taking as security for those loans bonds and stocks of a different character from what Moore & Schley had, uncurrent securities, which were not much good to be loaned on in the Street at that time, industrials with a limited market, American Tobacco Common, which was not a very much favored stock at that time, Guggenheim Exploration, Tennessee Coal & Iron, mining stocks of various kinds, Republic Iron & Steel. Now, Colonel Payne took a very large amount of this security from Moore & Schley and gave them first class or what we call gilt edged securities like Union Pacific and Great Northern, and they had these liabilities, and these exchanges between Colonel Payne and Mr. Schley amounted before they were through to six or eight millions of dollars on either side of the account, so that I knew they had other liabilities than those represented by their collateral loans, Street loans.

Q. So far as came to your knowledge, either through Mr. Schley, or otherwise, was anything done during that period by J. P. Morgan & Company or the United States Steel Corporation to increase the difficulties of Moore & Schley?

A. Nothing whatever.

Q. Did Mr. Schley claim anything of the kind?

A. Not for a moment; not within my knowledge.

Q. Was any advantage taken of the financial situation, so

far as you observed, or so far as Mr. Schley claimed, to force Moore & Schley to sell the Tennessee Coal & Iron stock?

MR. DICKINSON: That is excepted to as calling for a mere opinion of the witness upon an unproven state of facts. The Court could not form any possible estimate as to what the opinion of the witness would be worth, unless the facts on which it was based were disclosed, and as incompetent and irrelevant.

THE WITNESS: Of course the original suggestion,—in answering that question, I will say that the original suggestion that the Steel Corporation should acquire the Tennessee Coal & Iron came from the Tennessee Coal & Iron people, came through me, came originally as a suggestion from Colonel Payne to Mr. Schley that I should see Mr. Morgan and make that suggestion to Mr. Morgan.

By MR. LINDABURY:

Q. Was any other way of relieving Moore & Schley suggested by Mr. Schley?

A. None.

Q. Or a friend of his or anybody else?

A. On the contrary Mr. Schley said that he did not see that anything else but this solution of the difficulty would save him.

Q. When did Mr. Schley first say that to you?

A. He said that to me first the very night I saw him, November 1st.

Q. Did his attitude in that respect change at any time?

A. Never.

Q. Was there any time when he showed less anxiety to sell than he did then?

A. Never.

Q. Was he at the library on Saturday and Sunday?

A. Yes.

Q. And was he attended by counsel of his own?

A. Throughout, at all the interviews that I saw him, Mr. Schley had Mr. Thomas Thacher as his counsel representing him, acting for him, and fully in touch with the situation, ex

cept that I do not remember Mr. Thacher being there, I do not think Mr. Thacher was there on the evening of November 1st when I first went to Mr. Schley's office at 747 5th Avenue. He came in the next day.

Q. Did Mr. Schley or Mr. Thacher during either of those days take any position with regard to this proposed sale except to urge it along?

A. Not to my knowledge.

Q. You have already told us the price that Mr. Schley asked on the night of your first interview?

A. Yes.

Q. Did he ever recede from that?

A. No.

Q. And you did not, I suppose, from what you said?

A. No.

Q. Was the price the subject of negotiation with Judge Gary on more than the one day, more than Saturday? That is, did that negotiation as to price continue on Sunday, too?

A. I think it continued more or less—It is difficult for me to remember these details—but I think it continued more or less until Mr. Frick came in there where I was standing and said to me or asked me if I thought in my judgment anything less than par would do, and I said that that was the best judgment I could form, and he said that ended the matter of price with him. I think up to that time the price was always objected to by Judge Gary. I don't think after that I heard anything more as to price from him or anybody else.

Q. In the petition in this cause there is a statement which I now read you:

"Nothing less than the control of the Tennessee Company was considered by the Corporation, and negotiations proceeded rapidly and steadily to that end, it being represented to Schley that in no other way could relief be brought to him."

Does that correctly describe the situation?

A. I think the first half of it was true and the second half not.

Q. Why?

A. I do not think anything less than a majority was contemplated; that is what you read to me.

Q. Except the offer of a loan?

A. Except the offer of a loan, but I mean so far as acquisition was concerned.

Q. What did you mean by saying that the last half is not true?

A. The last half stated that it was represented to Mr. Schley. I should say that that was a representation not to Mr. Schley, but by him; certainly it was his representation to me.

Q. That is, the reverse is the truth?

A. The reverse is the truth.

Q. You have spoken of gathering at the library on that Saturday and Sunday, and of the general situation. Was help afforded by these gentlemen under the leadership of Mr. Morgan, and I think I might say yourself, to other institutions than Moore & Schley?

A. Yes, a large amount.

Q. What others? I will not ask you to tell any that are not publicly known; there may have been some.

A. There were a number that I knew about at the time, Mr. Lindabury, that I should not feel at liberty to mention.

Q. If they were confidential, please omit them from your answer.

A. They were. There was a committee formed of trust company presidents, certain trust companies, and they were a committee of which Mr. Edward King, President of the Union Trust Company was Chairman, and I think Mr. Wallace of the Central Trust Company was on that committee. I think Mr. Sheldon of the United States Trust Company, where I am a director, was also on that committee, and ultimately the trust companies united to make large loans to these trust companies that were in difficulty, taking over, as securities for those advances, loans that the needy trust companies had made to other persons upon collateral. Those loans that the needy trust companies had made to A, B and C, with collateral attaching to them, were taken over and

placed in the hands of the committee of which Mr. Edward King was chairman, to hold for common account for helping or advancing to trust companies, as a liquidation committee to manage these loans, which were quite slow, so as to put these needy trust companies in immediate receipt of the money necessary to save them.

Q. At Mr. Morgan's library?

A. Yes.

MR. DICKINSON: What night was that?

THE WITNESS: That was effected the night that I was there until five o'clock in the morning.

By MR. LINDABURY:

Q. You said it was Sunday night you were there until five o'clock?

A. That was the trust company thing that kept us there so long, until morning.

Q. How many did you have there that night until early in the morning, or late in the morning?

A. There must have been a hundred people there, off and on; and perhaps at a time. I think at that time these trust companies,—I think the boards of directors were there of these trust companies, or in large part they were there, besides their officers and their counsel. They raised a great deal of question about the right of these trust companies to make preferences in that way, to make preferences as to these advances to save them.

Q. They had no organization among themselves?

A. They had no trust company organization; each one for himself. It was necessary to form one and to carry out some scheme by which the trust companies could help each other. Mr. Morgan had been very insistent throughout that the trust companies that needed help in one direction or another—that each must help his own associates, and he was insisting upon it, that the rich trust companies, the solvent trust companies, should help those trust companies that were in difficulty, so then every trust company which was rich and solvent, the president of it would say "What right have I got to use my depositors' and stockholders' money in helping

somebody else?" and they made a great deal of question about it; some people who were very rigid in their opinions of what they could or could not do.

Q. Was anybody else helped that you are at liberty to mention; I do not mean now that day, Sunday, but during that period?

A. You mean back of that?

Q. Yes.

A. Yes; there was twenty-five million dollars put in the Stock Exchange to break the money rate.

Q. I mean during the time prior to the panic.

A. There was twenty-five million dollars contributed and put into the Stock Exchange to break loaning rates for money.

Q. And these same gentlemen did meet Mr. Morgan?

A. The leaders of them, and the government came in with twenty-five million dollars of deposits.

Q. That was Mr. Cortelyou?

A. Mr. Cortelyou.

Q. As a result of this thing that was done, were Moore & Schley saved?

A. They were.

Q. Was the three million dollar guarantee required?

A. No, but it was kept alive for a long time, until Moore & Schley were out of the woods.

Q. And as a result of that, and the other things done, was the general situation saved?

MR. DICKINSON: That is objected to.

THE WITNESS: That is a conclusion, of course. I think it was, but then somebody else may not.

By MR. LINDABURY:

Q. How long after that was it that you received the honorarium from Mr. Schley?

A. I don't remember.

Q. Less than a year?

A. Yes.

Q. About how much less?

A. It was within a month, I think.

Q. Long enough for him to think it over and find out what happened?

A. Yes.

Q. I wish you to state, if you will, Mr. Ledyard, what was the general attitude of Mr. Morgan during that panic and what was the general character of the work he did.

MR. DICKINSON: Excepted to as irrelevant and incompetent, a mere question of opinion upon the part of the witness.

THE WITNESS: If you ask what I saw, I should say that I was there at the library off and on during the crucial part of the panic, and was in touch with him a good deal, with Mr. Baker and Mr. Stillman and other gentlemen who were working with him. His library was the center in which all the effort at saving things was crystalized; meetings were held there constantly. If anybody was in trouble he went there with it. Those gentlemen were constantly there in conference. Aid in one case or another was arranged for and extended and brought to them. It was so varied in character and so incessant, pressing, that it is almost impossible to give a description of it. I never had an experience like that before, and I never expect to have another one. It was incessant.

By MR. LINDABURY:

Q. Did Mr. Morgan ever tire or ever quit?

A. Never. I tired. I remember the night I went home at five o'clock in the morning I was done up. I went back at half past eight. I could not sleep a wink. I went home, went out and took a walk, had a cup of coffee, and went back, and found he was just as fresh as a daisy. He did not mind it at all.

Q. I infer from what you say that Mr. Baker, Mr. Stillman and other bankers lent their help to save the situation, is that right?

A. Yes.

Q. Was there any one man who commanded the movement and by his personality exercised more control than any other over that movement and that situation?

A. There was.

Q. Who was it?

A. Mr. Morgan. Mr. Morgan was recognized by all those gentlemen as the leader of the whole thing. He was the man that came to the rescue. Everybody from everywhere said what they had to say to him.

MR. LINDABURY: That is all.

CROSS EXAMINATION

By MR. DICKINSON:

Q. Mr. Ledyard, you stated that during the Sunday or Sunday night that there were two main questions up for consideration, as I understood you; one was the condition of Moore & Schley and the consummation of the sale of the stock of the Tennessee Coal, Iron & Railroad Company, and the other was the condition of certain trust companies. Were those made interdependent upon each other?

A. Not at all. Mr. Frick suggested that the one should be made dependent on the other, and I told him it could not be done.

Q. You told him each would have to be handled upon its own merits?

A. Yes.

Q. Therefore the arrangements for taking care of the trust companies were not dependent upon the sale going through of the stock of the Tennessee Coal, Iron & Railroad Company, or *vice versa?*

A. On the contrary, Mr. Dickinson, my recollection is that the trust company people did not know anything at that time about the proposed sale of the Tennessee stock.

Q. State in a general way what were the arrangements in regard to taking care of the trust companies and when they were concluded; I mean concluded in the sense that the situation was arranged to be met and in hand.

A. My recollection is that they were concluded about that night.

Q. That night?

A. I think so.

Q. Sunday night?

A. Yes. The details may not have been carried out, but they were arranged for that night.

Q. And of course an arrangement among men of that character was as good as a contract?

A. My recollection is that next day the trust companies sent down to Mr. King the notes that they held from borrowers from them, with the collateral, and turned them over to the King committee, and from that time on the advances to them from time to time continued.

Q. So when they separated that night, the matter was arranged?

A. It was taken care of, because I did not leave Mr. King until we came to some conclusion. He wanted my advice about it as it went along, as he was chairman of that committee.

Q. Mr. Ledyard, in this transaction, so far as you had anything to do with it in respect to the purchase of the stock of the Tennessee Coal, Iron & Railroad Company, when did you understand that it was concluded; that is to say, in the sense that the transaction was settled and would go through? I do not mean when any papers were signed.

A. Not until after Judge Gary and Mr. Frick returned from Washington.

Q. So up to that time the thing had not been settled?

A. No. I did not know they were going, but afterwards I knew that they had gone. I learned before I left Mr. Morgan's house that night at five o'clock.

Q. You testified, I believe, before the Stanley Committee that you knew nothing about their going?

A. I did not know that evening, prior to their departure, that they were going, and I think I so testified before the Stanley Committee, and I mean so to testify now.

Q. Did you know, Mr. Ledyard, that some of the loans of Moore & Schley were time loans and some of them were call loans, and that some of them upon which Tennessee Coal, Iron & Railroad stock was put up as collateral, were not matured and were not callable?

A. I think I did, but of course if I may add what the universal custom of the Street is——

Q. If I in any way interrupt you, just stop me, because I want you to answer fully.

A. I think I did know that some were call and some were time loans. I certainly should have assumed that, because that is the ordinary condition, but in the case of time loans of course they would become call loans——

Q. At maturity?

A. No; on failure to keep a margin of generally twenty per cent. good. All time loans in the market here, in the Street, and it is so generally in financial matters, contain a provision that the collateral shall be kept good with such and such a margin, and if not, then the loan can be called.

Q. Did you know at that time that any of the persons from whom Moore & Schley had borrowed money, had called them upon any of the loans upon the Tennessee Coal, Iron & Railroad Company?

A. They told me that they had to shift a good many loans for that reason, shift from one person to another, and they were constantly called upon to shift collateral. I may add perhaps that in the ordinary loans in the street, whether on time or on call, the borrower has the right at all times to change and shift his collateral; unless it is otherwise provided. The borrower has such and such collateral with such a margin; those are things which brokers are selling, perhaps; they have got to withdraw them from the loans and substitute others, so it is provided, and the custom provides for the substitution of collateral. On the other hand, the lender may insist upon margin being kept up by withdrawing such discredited collateral, when one declines in value, and depositing additional collateral to make good the defect.

Q. Did they state that that condition had arisen in respect to the Tennessee Coal & Iron Company especially?

A. They told me that especially the Tennessee Coal & Iron Company stock, as being a pegged stock, was under suspicion, as it would not be available collateral in the event they had to close out the collateral for sale.

Q. Then, as contrasted with others of their collateral that were up, the condition was emphasized in respect to the Tennessee Coal & Iron?

A. Yes.

Q. You spoke of Mr. Payne as being a man of wealth and a large investor. Did he have any stock at that time in the United States Steel Corporation?

A. I don't think he ever held a share in it, to my recollection.

Q. You do not know?

A. I would know, because I have always had very close knowledge of his affairs, Mr. Dickinson. I have practically managed them for him; his financial affairs.

Q. Did you have control of his stock and possession of it?

A. I have had, at many times. I have had control of all of them, practically.

Q. Do you undertake to speak as of your own knowledge, your own positive knowledge of the situation, in respect to his holdings at that time of the United States Steel Corporation stock, or is it your general impression you are giving?

A. It is much more than a general impression, Mr. Dickinson. I do not think he ever held a share of Steel stock, common or preferred.

Q. You do not think he ever did?

A. I am quite confident that he did not. He has some Steel bonds to-day, and the only Steel bonds he has got are the result of this transaction, the conversion of his Tennessee Coal & Iron into Steel.

Q. At the time that you first went to Mr. Morgan and spoke of the sale of this stock, did you understand that in the sale, so far as you were there representing the situation, would be included the stock of Mr. Payne?

A. I can answer yes to that question.

Q. Well?

A. But it would have to be with this qualification.

Q. Make any qualification you wish, Mr. Ledyard.

A. After the lapse of six years I cannot point to the distinct thing that was told me by A or B, that so and so was a fact; I mean, on this present question.

Q. But, answering to the best of your recollection?

A. To the best of my recollection I understood at the time that it would come in. I knew perfectly well that it would, and it did, without a question. I never had to go to Colonel Payne to ask him about it.

Q. And that was included with whatever was represented as being subject to purchase?

A. I knew that the Tennessee Coal & Iron Stock was pooled, as it is called. I did not know that it was ever the subject—which I have since heard—of a formal syndicate agreement, with syndicate management and so on. I did know that it was pooled, for Colonel Payne told me so.

You do not pool a stock without getting a majority of the stock. I supposed from the beginning that the suggestion was that it was a majority of the stock that was being discussed. I never would have supposed they would come to me with anything else, because I would not have thought the Steel Company would look favorably on purchasing anything less than a majority.

Q. You did understand that in that majority was included the stock of Colonel Payne?

A. Either in that majority or to be added to it. I do not know that it was necessary to make up the majority. He only had ten thousand shares of his own at that time.

Q. He had 10,000 shares, did he not, and he had 15,000 shares that had become his through an exchange of securities with Moore & Schley, making 25,000 shares, did he not?

A. 25,000 is right.

Q. So he had the absolute right to dispose of that at that time?

A. I think so. My only question is about the date as to the last. I do not know.

He owned 10,000 shares of his own originally. He took 15,000 shares from Moore & Schley as collateral for certain standard securities of his own that he loaned to Moore & Schley. At a later date he converted that into an absolute exchange, and then he owned it.

Q. But, at that time, he had the *jus disponendi* in respect of the stock?

A. I don't remember whether at that date he held that 15,000 shares as collateral.

Q. You have spoken of your testimony before the Stanley Committee?

A. Yes.

Q. That was given somewhat nearer the event than now?

A. It was.

Q. I will call your attention, by way of refreshing your memory, to page 943 of that testimony, in which the following occurs. Have you a copy of it there?

A. I have.

Q. Suppose you turn to page 943?

A. Yes.

Q. (Reading):

"Mr. Littleton: Is there any way for you to tell us how much there was in what was called brokers' stock or stock held on behalf of their customers, and free stock in which at that time they were dealing?

"Mr. Ledyard: I do not think I knew that at the time, because I was so interested in getting the thing itself through that I did not consider whether it was A's stock or B's stock, or free stock, or pool stock or syndicate stock that was to be disposed of. My object was to save Col. Payne's very large interest in that house as a creditor at the time. I think there were $30,000,000, in round numbers, of Tennessee Coal & Iron Co.'s stock, were there not, at par?

"Mr. Littleton: Three hundred thousand shares.

"Mr. Ledyard: That would be $30,000,000 at par, which would be the total capitalization of that company. Mr. Schley has testified that there was some 100,000 or 110,000 shares that were pledged by them as collateral for their loans. That would account for ten or eleven million dollars out of $30,000,000, because that is ten or eleven million dollars. Then there were 25,000 shares held by Col. Payne—10,000 shares in the syndicate which were not pledged to anybody for anything, and 15,000 that he held as collateral for some of the securities that he had loaned to them. That would be 25,000 more. That would increase the ten or eleven million I would thus know about, from Mr. Schley's testimony and

from what Col. Payne had, to $13,000,000, or thereabouts, out of the $30,000,000. How much more there was I do not know, and never had occasion to know."

Q. You gave that testimony?

A. I did; and I would give it to-day.

Q. And the facts are as stated there?

A. They are, as I understand them. If I may explain it?

Q. Yes; if you wish to make any explanation, you may do so, of course.

A. I said in my first testimony, to-day, that Colonel Payne owned 10,000 shares in his own account—absolutely owned them.

Q. I do not think there is any contradiction——

A. He next took 15,000 as collateral for securities loaned them. When that 15,000 became owned by him, instead of held by him as collateral, I do not know; but I think it was after this event. The reason I think so is I find a memorandum, a copy of a letter I sent to Moore & Schley afterwards, referring to that, in which I said, referring to that 15,000 shares of stock: "The latter having since, with your consent and mine, been exchanged for Steel bonds," which shows that when that was exchanged it was still in the form of collateral in his hands, requiring the consent of both of them.

Q. But he had the right to dispose of that and——

A. He did not have the right to change that into Steel bonds without their consent; and my letter to them says: "The latter having since, with your consent and mine, been exchanged."

Q. But he had made the exchange, had he not, of these securities, absolutely?

A. He had loaned certain standard securities to Moore & Schley, and taken from them, as collateral security, 15,000 shares of Tennessee Coal & Iron Stock. Therefore he held that 15,000 shares of Tennessee Coal & Iron stock as collateral security for the return of his security.

Q. And they held other securities in the place of that?

A. He lent them his securities.

Q. Which they were using for their loans?

A. He lent them those securities to put in their loans; therefore he held their 15,000 shares as collateral security for the return of his securities. That was afterwards transferred into absolute ownership by him. "You can own the securities I have lent you, and I will own the securities that you have put up here as collateral."

Q. It is a fact, as stated here, that at that time you were so interested in getting the thing itself through that you did not consider whether it was A's stock or B's stock or C's stock or pool stock or syndicate stock that was to be disposed of?

A. That is true. Mr. Thacher was representing Mr. Schley. I was there with a proposition that they should buy Tennessee Coal & Iron stock. To my mind that meant the whole of it, and the whole of that would come in at the same time. What Schley had a right to sell was a question between him and his customers, or his own people who had any interest in that stock, and Mr. Thacher was there to advise him about that. I did not look into that.

Q. You did not make any representations in regard to that?

A. I didn't make any representations in regard to that.

Q. On page 954 of your testimony, I call your attention to the following at the top of the page:

"Mr. Littleton: Did you have any idea how much stock you were representing when you went from Mr. Schley to Mr. Morgan?

"Mr. Ledyard: I do not think I was representing any.

"Mr. Littleton: I do not mean 'represented' in a strict sense. I do not want to put you in an unfortunate position by any inaccuracy of word of mine. But how much stock did you suppose Mr. Schley represented at that time?

"Mr. Ledyard: I supposed—and I do not know what I can base it on, but my impression at the time was—my contemporaneous impression—that it amounted to substantially a majority of the Tennessee stock."

You so testified then, and do now?

A. I understand myself to have testified that in substance.

Q. On the same page, farther down, I will read you:

"Mr. Littleton: Did not Col. Payne tell you the stock had been syndicated?

"Mr. Ledyard: He said it was pooled, but the particular thing that arose in my mind—I can put it in this way, to figure it out to you as it happened. Col. Payne suggested to me that this should be done to save Moore & Schley, and that the Steel company might be induced to buy the stock of the Tennessee Coal & Iron Co. I did not stop to see who had a right to sell it then. I did not stop to see the technical thing. Mr. Schley was represented throughout by his own counsel, Mr. Thomas Thacher, who was present at nearly all our meetings. What they had a right to do as representing their constituent customers or the people to whom they had loaned, did not interest me at that time at all. Col. Payne was the only one I knew, and I was assuming that other thing would be taken care of by Messers. Moore & Schley, with their own counsel."

You so testified, did you?

A. I did, and I understand myself to have testified the same in substance to-day.

Q. Then, as I understand, upon the suggestion of Colonel Payne you saw Mr. Schley and went to Mr. Morgan with a general presentation of the subject of buying this stock?

MR. LINDABURY: I object; that is not what he said.

MR. DICKINSON: I will see whether that is what he said.

MR. LINDABURY: He specifically stated that he did not go to see Mr. Schley at the suggestion of Colonel Payne. I asked that question, and he negatived it.

(The question was repeated by the stenographer.)

By MR. DICKINSON:

Q. I will ask you if that is correct, as far as I have stated?

A. Colonel Payne had suggested to Mr. Schley to ask me to go to see Mr. Morgan, and Mr. Schley had done so, and I had gone.

Q. And you had seen Mr. Schley and went to Mr. Morgan?

A. Mr. Schley sent for me and suggested that I see Mr. Morgan, and I went to Mr. Morgan.

MR. LINDABURY: There is quite a difference in this case whether he went to Mr. Schley as a volunteer or at Mr. Schley's invitation or solicitation, and he made that clear.

Mr. Dickinson: I was not laying any emphasis on that at all.

(Whereupon a recess was taken until 2.00 p. m.)

AFTER RECESS.

LEWIS CASS LEDYARD,

witness under examination at the taking of recess, resumed the stand.

CROSS EXAMINATION (Continued),

By Mr. Dickinson:

Q. Mr. Ledyard, you knew that the stock, or at least a large part of the stock of the Tennessee Coal, Iron & Railroad Company was pooled, but did you know the amount of it?

A. I did not.

Mr. Lindabury: Do you mean the amount pooled?

Mr. Dickinson: Yes.

The Witness: I knew how much the whole stock of the company was.

By Mr. Dickinson:

Q. But you did not know the amount that was pooled?

A. I did not.

Q. And you did not know the amount that Moore & Schley were holding?

A. I knew some amounts, but I did not know the total.

Q. Of the stock that Moore & Schley had in their possession, did you know what portion of it they had a right to rehypothecate or sell, or what portion they held as mere depositaries upon which they had no claim at all, for safekeeping?

A. I assumed of course they had a right to rehypothecate all stock upon which they had made advances.

Q. But you did not know how much they held as mere depositaries?

A. I did not know how much they held as depositaries of what you might call stock fully paid and not advanced upon by them.

Q. Or which was just left by people with them for safekeeping?

A. No, sir.

Q. And you did not look into those figures and did not know anything about those details?

A. No, sir, I did not. I simply assumed it was the control of the company and the majority of the stock.

Q. That was an assumption?

A. Based upon what they said, yes.

Q. Based upon what?

A. Based upon the statement of Colonel Payne and his suggestion that they should acquire the Tennessee Coal & Iron Company. It was based in the next place upon the similar statement made by Mr. Schley that what he wanted was that I should see Mr. Morgan to see if they would acquire the Tennessee Coal & Iron Company. I did not ask them how many shares that meant, for I, rightly or wrongly, assumed that that must mean the control.

Q. You assumed in case of a sale that the sale would involve a control?

A. I did.

Q. And you did not understand the actual ownerships or how it was divided up?

A. I did not, but I assumed also that Mr. Schley could speak for the majority.

Q. And you made no representations in regard to that?

A. No; I called it an acquisition or purchase of the Tennessee Coal & Iron Company.

Q. As I understand it, you went to Mr. Morgan to state to him the situation and bring the matter to his attention; you were not representing this stock or selling the stock?

A. I only went there by reason of my relations with Colonel Payne, whose investment with Moore & Schley was in danger, and to save that.

Q. And you did not go there as offering to sell the stock?

A. No.

Q. As a representative or agent of anybody?

A. No, not in any way.

Q. And did not make any such representations as that?

A. I did not. I told him the facts just as they were.

Q. Then you left it for them to determine, and the only further connection, as I understand it, was what you have stated, with Mr. Frick and others about the conditions of the times, but you did not intervene at any time as an active agent or representative of anybody in the sale?

A. I intervened a great deal, in interviews with Mr. Frick and with Judge Gary.

Q. But it was on the situation, was it not?

A. Not only on the situation, because I was the one who had gone to Mr. Morgan at Mr. Schley's request. I did not represent the stock. The question was for him to determine, whether he would ask the Steel Corporation whether they would consider the acquisition of this stock; the question of terms and what was necessary to pull them out was a question, of course, that they talked with me about, and it was what Mr. Schley had talked with me about, and it was talk that I had reported to Mr. Morgan and these other gentlemen; so also as to negotiations as the matter came up, as the consideration of the matter changed from time to time, I was the one that they would come to; Judge Gary or Mr. Frick would come to say "Would so and so do"; thus I was the person to whom Judge Gary came and made the suggestion of a loan of five or six million dollars, and I went back to Mr. Schley and asked him whether that would do; so also when the question arose as to whether Moore & Schley could be helped out sufficiently by the exchange of bonds instead of paying cash for the stock, I was the one to whom that suggestion was made, and I in turn went to Mr. Schley to ask him if that would work out. In that way, without representing anybody, I was the responsible person who had brought the proposition to them, and consequently, naturally, I was the one they spoke to about it.

Q. You were rather acting as a friend to both parties and a medium through which information passed?

A. That is right.

Q. Referring to that loan of five or six million dollars, Mr. Schley told you that that amount would not suffice, would not pull him through, didn't he?

A. Yes.

Q. No other amount was spoken of at any time, was there?

A. Of a loan, no.

Q. And nothing was said about whether a larger amount would pull him through, in the way of a loan?

A. No.

Q. At this first interview between you and Mr. Morgan I would be glad, Mr. Ledyard, if you would state—you said you could not repeat the language used by you, but state the essence now of what you said to him.

A. I went to Mr. Morgan that morning, I think at his house, and then we went over to the library. Our talk was in the library, I think. I said to him that Colonel Payne was a very large creditor of Moore & Schley and that for some time past he had thought they were in danger and been very much concerned over their condition; and that Colonel Payne had told me the week before that he was going to suggest to Mr. Schley that I should see Mr. Morgan to see if the Steel people would purchase the Tennessee Coal & Iron Company; that Moore & Schley were loaded up with Tennessee Coal & Iron stock, and I told him, I also said that Mr. Schley had sent for me the night before to come to him, and I had been there and received my information also from him. I went on and told Mr. Morgan that Messrs. Moore & Schley owed from $33,000,000 to $35,000,000 on loans which they had borrowed upon collateral, ordinary collateral loans, and that they had a large amount of liability in excess of that; that I had gone over with Mr. Schley and Mr. Dickerman and Mr. Tierney their condition, and that they had assured me that they could be pulled out with every reasonable chance of weathering the storm if the Tennessee Coal & Iron stock could be sold to the Steel Corporation at par. I told him that a lot of other collateral up in loans was of a character that was not first class

for borrowing purposes, and that that added to their difficulties. I think I told him something of the character of some of these other securities, what they were. I am not sure about that, but I think I did, so that he could see it.

Q. Did that cover in substance what you said?

A. Yes, that covers the substance of it, I think.

Q. All the material points?

A. Yes.

Q. I believe you stated that after Judge Gary came it was restated to him what you had stated to Mr. Morgan?

A. Yes, in Mr. Morgan's presence and his own.

Q. By you or Mr. Morgan, do you recall?

A. By me. Mr. Morgan I think introduced it by saying that I had come to tell him about this condition, and then asked me to state this all over again to Judge Gary; that is my recollection.

Q. You did not have any information at that time as to the amount of stock that Moore & Schley had up as collateral, the amount of Tennessee Coal & Iron stock as collateral, with the various banks?

A. Only that there was a great deal of it and that they could not place all that they had; that I also knew.

Q. But you did not know the amounts?

A. I did not know the amounts that they had in various banks.

Q. Or the total amount?

A. I knew they had a lot in various banks, and I also knew that they had a lot in their box remaining unavailable, that they could not use.

Q. You did not know the amount of that?

A. No, but they told me a large amount.

Q. Did you make any other representations or statements in regard to the stock of Moore & Schley except in respect of the price, after that, to either Mr. Morgan or Judge Gary, and if so, state what?

A. I recollect nothing more unless you call my attention to something that I may have neglected in summing up my last answer.

Q. You have no recollection of any other statement?

A. No, I have not.

Q. After that it moved on to a question of purchase and terms?

A. Yes, the question of whether to purchase or not, and if to purchase, upon what terms; and also subject to these variations that came into it afterwards as to whether some other thing might do.

Q. What variations did you have in mind?

A. I had in mind then the suggestion of Judge Gary that they might prefer to make a loan of five or six million dollars instead of purchasing it at all.

Q. Do you recall any other?

A. No, sir.

Q. You never saw the original report made by Mr. Joyce?

A. No, sir; I never did.

Q. He made that, I believe, to Mr. Morgan, and you were not present when that was made?

A. He left me to go in to Mr. Morgan. I was standing in the hall when I saw him. It was that night when all these people were there.

Q. You were not present when he had his interview with Mr. Morgan?

A. I was not. I don't know what he said.

Q. Do you know what the Joyce report contained, of your own knowledge?

A. I have never seen it or heard its contents stated. I have heard of it, of course.

Q. Do you know the amount of loans of Moore & Schley that were supported either partially or wholly by Tennessee Coal & Iron stock as collateral at the time this transaction began?

A. Their whole amount of loans outstanding at that time, which they owed upon collateral was $33,000,000 or $35,000,000.

Q. I know, you have stated that.

A. I understood from them that those loans, as is the ordinary case, were on mixed collateral.

Q. But you do not know how much was supported entirely by Tennessee Coal & Iron, or partially by Tennessee Coal & Iron?

A. I can only give my impression.

Q. I am asking if you have any knowledge.

A. The impression I received from them was one of mixed loans only, not of specific loans on Coal & Iron as such.

Q. I think that answers the question.

A. I do not understand, with the exception of a loan by Mr. Morgan and a loan by the Steel Company——

Q. The loan by Mr. Morgan was upon Tennessee Coal & Iron Company stock?

A. I think that was substantially wholly on Coal & Iron stock, and also one loan from Colonel Payne of securities to them; but that I have not included in the ordinary collateral loans of $33,000,000 or $35,000,000.

Q. You knew the various gentlemen, at least some of them, who went into this syndicate that had this stock pegged, did you not?

A. I really do not even know to-day who they were, Mr. Dickinson. If you will tell me——

Q. You knew Mr. Hanna, did you not?

A. Mr. Leonard Hanna; I am not sure that I had ever known him before that. His brother-in-law I did, and his brother, the Senator. I am not sure that I ever met Leonard Hanna before this.

Q. Did you not know that there was great reluctance on the part of some of these parties to sell, and that they regreted that the exigencies of Moore & Schley made it necessary to sell?

A. I did; and that was particularly true of Mr. Leonard Hanna. He seemed to be a great believer in the Tennessee Coal & Iron property. I think Mr. Gates was one of those gentlemen too, but he was not in this country at that time.

Q. He got here about that time, I believe?

A. Not until after this was all over.

Q. Was Mr. Hanna a man of means?

A. Mr. Leonard Hanna, yes; not so much so as his brother, but he was a man of means.

Q. Do you know when Mr. Gates did get here? I will ask you if you recall that he got here the Monday before the transaction was consummated.

A. No; my recollection would have been later than that.

Q. You do not recall?

A. I know Mr. Schley spoke to me of Mr. Gates being away, and of his wishing to get Mr. Gates' assent.

Q. Was Mr. Gates reputed to be a man of wealth?

A. Yes. I did not know anything about him; I had never met him then.

Q. Is it not a fact, Mr. Ledyard, that the impression you received at that time was that these men who were in the syndicate had gone into it principally because they believed in it and wanted to develop the property and wanted to build it up, and that they were, all of them, very regretful that the conditions which attached to Moore & Schley's business at the time rendered a sale of it imperative, and that you were of the opinion that they sold with reluctance?

Mr. Lindabury: That is objected to as irrelevant and immaterial.

The Witness: That was my impression at the time, with an important exception: there was one gentleman that I understood had bought very largely of Tennessee Coal & Iron, and who was, at that time, very much extended, and Moore & Schley were carrying his stock. That was a very important exception, because I think it was a very large amount in which he was involved.

By Mr. Dickinson:

Q. With that exception the statement is correct as to the others?

A. With that exception I think it would be correct as to the others.

Q. The man you refer to was George M. Kessler?

A. He was. Mr. Dickinson, if I had a list of those men I could state that a little more accurately.

Q. That is sufficient, unless you desire to amplify it.

A. I did not want to testify to having seen more of them than I did.

Q. I have read your testimony here——

A. I saw only two or three of them.

Q. What I read to you was almost verbatim from your testimony before the Stanley Committee.

A. Yes; I recognized it.

MR. LINDABURY: What page?

MR. DICKINSON: Page 945. Do you want me to read that?

THE WITNESS: No; I recognized it as taken from my testimony.

By MR. DICKINSON:

Q. I paraphrased it a little.

A. I understood you were reading from my testimony.

Q. I paraphrased it, putting it in the *oratio obliqua.*

A. I understood you were reading from my testimony before the Stanley Committee. What I was not clear about was how many of those gentlemen I had seen. I do not remember who they were. I can now answer that question a little more fully.

Q. I shall be very glad if you will.

A. I have the report of some testimony before the Senate Committee which gives a list of that syndicate. I do not know that I testified at that time that there was any such syndicate. The gentlemen who are stated in this testimony to have been members of that syndicate are: Colonel Payne—of course I knew all about him.

Q. He was a man of wealth?

A. He was a man of wealth.

MR. LINDABURY: Was he one of those who did not want to sell?

THE WITNESS: Colonel Payne's attitude was this: upon the mere merits of selling the Tennessee Coal & Iron, he would not have wanted to sell at all; but he had an enormously greater amount at stake in the salvation of Moore & Schley than he had in the Tennessee Coal & Iron stock, of which he only had a million dollars interest, and he was the one who originally made to me the suggestion that we should save Moore & Schley.

The next one is L. C. Hanna—Mr. Leonard Hanna. Mr. Hanna was quite reluctant and sorry that this sale should

have to take place, because he told me at the time that he had been a consistent believer in the future of the Tennessee Coal Company.

Mr. Schley was the next. The circumstances speak, for him, for themselves.

Mr. Duke I had not seen about it.

Mr. Berwind I did. Mr. Berwind took the attitude that he was quite willing to help along and if it was necessary to sell his stock he might be counted on to go in.

Mr. Gates I had not seen.

Mr. Brady I had not seen.

Mr. Kessler I had not seen. I saw Mr. Oakleigh Thorne on the street, as I told you in my testimony this morning, and he told me he would put his stock in.

The only other member on this list that I see on page 66 of this Senate report, of the syndicate, was Mr. Topping, who I think was president of the Tennessee Coal & Iron. He had only a small interest in the syndicate, as it appeared, of a thousand shares.

Q. Referring to the testimony before the Stanley Committee, turn to page 942. I would like to read you two or three passages there, beginning down about the middle of the page.

"Mr. Littleton: You knew Mr. Schley was simply a member of the syndicate individually, so far as any actual ownership was concerned?

"Mr. Ledyard: No; I thought that Mr. Schley—I understood from Mr. Schley in the beginning that they were carrying, as brokers, upon a margin, a very large amount of stock that was not in the pool stock."

Is that a correct statement of fact?

A. Yes, and refers among other things to the Kessler stock.

Q. Now, on the bottom of the next page, 943, begin there, or if you will read a statement by you before that, so as to get the connection, I will wait until you read the previous four lines.

"Mr. Littleton: In other words, did it not turn out a little later that this stock which was there on mere broker-

age account was less than the control of the Tennessee Coal & Iron Co. in amount, and also did it not turn out that it would not have been fair to the other owners, syndicate or otherwise, to have attempted a sale of that by Moore & Schley without giving them an opportunity to avail themselves of the situation?

"Mr. Ledyard: I think that is very probable, but I know I could not testify directly to the first part of what you say. I know there were two gentlemen that I saw, one by accident and the other one I sent for, because he was a friend of mine and a client of mine. The one whom I met by accident was Mr. Oakleigh Thorne. I met him on the street and told him about it, and he said he had some stock which was not pledged at all at Moore & Schley's, but he would send it up or would want to put it in with the rest. Mr. Edwin Berwind I sent for. He was a friend of mine, a client of mine, and I telephoned for him to come and see me and told him what was on foot, and I said I understood he owned some of this stock, and he said he would put it in. So far as I saw the owners of that, I think there was a good deal of reluctance on their part to sell and of regret that the exigencies of Moore & Schley's situation made it necessary to sell. That is the plain fact of the situation."

Do you recall that?

A. I do.

Q. Is that a correct statement?

A. I so testified.

Q. I had asked you about part of that, but not all.

A. I so testified, and I think I was correct in so doing.

Q. The question was up, in case of the sale, whether it would depend upon control; nothing less than control, I understand would have been contemplated, I understood you to say.

A. So I thought.

Q. That is to say, that the United States Steel Corporation would not want to buy a minority?

A. That went without saying.

Q. Now, you stated this morning, "I do not think anything less than a majority was contemplated. That is what

you read to me." Was it in that sense that you used that term? I will read the whole connection; I will go back a little and make it entirely clear. This morning the question was asked you:

"Q. In the petition in this cause there is a statement which I now read you: 'Nothing less than the control of the Tennessee Company was considered by the Corporation, and negotiations proceeded rapidly and steadily to that end, it being represented to Schley that in no other way could relief be brought to him.' Does that correctly describe the situation?

"A. I think the first half of it was true and the second half not.

"Q. Why?

"A. I do not think anything less than a majority was contemplated. That is what you read to me.

"Q. Except the offer of a loan?

"A. Except the offer of a loan, but I meant so far as acquisition was concerned.

"Q. What did you mean by saying that the last half is not true?

"A. The last half stated that it was represented to Mr. Schley. I should say that that was a representation not to Mr. Schley, but by him. Certainly it was his representation to me."

You did not mean to say by that that he represented to you that he owned the control or majority, or that a majority would go to him?

A. The allegation of the bill to which my attention was then called consisted of two parts; in one of them it stated in substance that the transaction proceeded for the acquisition of the control, which was represented to Mr. Schley as the only way in which it could be done. I criticized that because I said the representation, that that was the only way in which the thing could be done, was made by Mr. Schley and not to Mr. Schley. I am not speaking now of the question of majority, but the question as to whether there was any other way than the acquisition of the Tennessee Coal & Iron stock. I say that was represented by Mr. Schley and not to him, as the quotation had it.

Q. Then there was no representation by Moore & Schley as to the control of it?

A. None except what was in the situation as I have explained it already. No representation of the majority, except what I have already testified to as being in the situation. In this particular case this morning the only thing that I meant in answering the question as to representations by or to Mr. Schley was whether this method was the only method that would pull them out; that is, a sale to the Steel Corporation.

Q. That is to say, it was understood that the United States Steel Corporation would not buy less than a majority?

A. Yes.

Q. And the situation was such that Moore & Schley felt that there had to be a sale in order to give relief?

A. Precisely.

Q. Did you mean to say by that that Moore & Schley represented to you the amount of stock that they owned or controlled, or that would come to them as beneficiaries directly or indirectly in this transaction?

A. I did not. If I may volunteer something: You asked me this morning when this was finally consummated. I said not until after the return of Judge Gary and Mr. Frick from Washington. That was Monday. The next day was Tuesday. I have quite a strong impression that the exchange of bonds began on Wednesday, as early as Wednesday.

Q. Did Mr. Schley represent to you the amount of stock that he owned or that Moore & Schley owned or that they had a right to dispose of by rehypothecating or sale?

A. He never made any specific representation to me of the amount of stock.

REDIRECT EXAMINATION,

By Mr. Lindabury:

Q. Did Mr. Schley ever ask you to offer less than a majority of the stock?

A. Never.

Q. Did he ever suggest that the Steel Corporation might be willing to purchase less than a majority?

A. Never, and when Mr. Hanna was here Mr. Schley was present at my interview with Mr. Hanna when Mr. Hanna wanted to know how the minority stock would be taken care of.

Q. Mr. Schley was present then?

A. He was.

Q. And was an answer made?

A. Yes; that they should have the same terms. I went to Judge Gary about that.

Q. Did either Judge Gary or any other representative of the Steel Corporation at any time state to you that the Corporation would not purchase or consider the purchase of less than a majority?

A. It is difficult for me to answer that question, Mr. Lindabury, for the reason that there was not anything fundamentally assumed in the whole transaction except a majority that we were talking about.

Q. Did I understand you to say that it was assumed on both sides?

A. Yes, sir.

Q. You say Mr. Schley on one side; I want to know if the Steel Corporation on the other——

A. Nothing occurred to give me the slightest impression that they would have taken a minority interest.

Q. What I am concerned to know just now is whether any one made any such a statement as that?

A. That they would not take less than a majority?

Q. Yes.

A. It is too long ago for me to remember.

Q. You recall nothing of the kind?

A. I do not recall anything of the kind.

Q. Was any statement of that kind made to Mr. Schley by anybody in your presence?

A. Not to my recollection, for I do not remember the question ever arising.

Q. That is all you can say, of course; I only want your recollection.

A. I cannot remember it.

MR. REED: Here are the nine blank copies of cost sheets, forms, which it was agreed should not be printed in the record, but should be put in those volumes of the record which go to the Court.

W. J. FILBERT,

a witness previously sworn on behalf of the defendants, was recalled for further examination.

CROSS EXAMINATION (Continued),

By MR. COLTON:

Q. Mr. Filbert, you were asked to produce the exports of the American Steel & Wire Company for the years 1900 and 1901 in so far as they were available to the United States Steel Corporation. Have you done that?

A. Yes, sir; but I would say that I understood the request was to divide and show separately, each, the domestic and export shipments for those years.

Q. That is correct?

A. Yes.

Q. Is this the paper that you produce in response to that request?

A. It is.

MR. COLTON: I offer in evidence Mr. Filbert's return to the request of the Government for the separation of wire products, domestic and export, for the years 1900 and 1901.

MR. REED: I object to that because the statement should be offered as a whole and not in part.

MR. COLTON: The Government did not call for the year 1911, and I do not offer that in evidence. In fact, the Government objected, on the ground that the year 1911 included the time subsequent to the filing of the bill.

MR. REED: I refer to the record for what the Government asked, and renew the objection.

By MR. COLTON:

Q. Mr. Filbert, the year 1900 has nothing to do with the year 1901. It is a separate statement, is it not?

A. Certainly.

Q. It might just as well appear on a separate piece of paper, might it not?

A. It could.

Q. And the same is true of the year 1901?

A. It could in so far as presenting alone the results for that year may be concerned.

Q. The years 1900 and 1901 are complete in themselves?

A. Each is complete in itself as to the business for the respective years covered.

MR. COLTON: I offer in evidence what Mr. Filbert produced in reference to said years, and ask to have it marked.

MR. REED: May I ask whether you are having just that part marked that you are offering?

MR. COLTON: I am having that part of it marked which I understood to be called for, to wit, the years 1900 and 1901. I am not offering in evidence anything else than those two years.

MR. REED: I renew the objection to the offer of a part only of the paper.

(The part of the above mentioned paper so offered in evidence was thereupon marked "Government Exhibit (Filbert) No. 434, June 25, 1913," and will be found in the volume of exhibits.)

By MR. COLTON:

Q. Mr. Filbert, you were also asked in so far as you could to produce the entire exports of the United States Steel Corporation for the year 1900.

MR. REED: There was no United States Steel Corporation in 1900.

By MR. COLTON:

Q. The subsidiaries of the United States Steel Corporation for the year 1900.

Have you produced that so far as you could?

A. I have, sir.

Q. What companies were you able to get figures for for the year 1900?

A. I was able to get the exports classified by products, for the Illinois Steel Company, the Lorain Steel Company, except as to the shipments from its Johnstown plant, the American Steel & Wire Company, the National Tube Company, the American Bridge Company, the National Steel Company and the Carnegie Steel Company's export shipments of rails and sheet bars.

Q. And you produce this paper in response to the request of the Government for the exports for the year 1900 of the subsidiaries of the United States Steel Corporation?

A. I do, sir, so far as I am able to produce the particulars of those exports.

MR. COLTON: I offer the document produced by Mr. Filbert in evidence as a part of his cross-examination.

MR. REED: The whole of it?

MR. COLTON: For the year 1900, yes, as called for; the whole of it as called for.

(The paper referred to was thereupon marked "Government Exhibit (Filbert) No. 435, June 25, 1913," and will be found in the volume of exhibits.)

By MR. COLTON:

Q. You were also asked to produce the original tube reports in connection with Defendants' Exhibit No. 76?

A. Yes.

Q. Have you those?

A. Yes. (Handing papers to counsel.)

MR. DICKINSON: In view of the loss of time that would result if we attempt to go through these papers now, I suggest that you call another witness if you have one in readiness, and recall Mr. Filbert in the morning.

MR. REED: Very well. We will call Mr. Winslow.

CHARLES K. WINSLOW,

a witness called on behalf of the Defendants, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Reed:

Q. Where do you live?

A. I live in Upper Montclair, New Jersey.

Q. What is your occupation?

A. My occupation is statistician for the United States Steel Corporation, under Mr. Filbert.

Q. How long have you been employed by the Steel Corporation?

A. I was employed by the U. S. Steel Corporation at its organization in 1901.

Q. As statistician?

A. As statistician, on statistical work of various kinds.

Q. Do you know the officers of the American Iron and Steel Institute in Philadelphia?

A. Yes.

Q. You know Mr. Swank and Mr. Gray?

A. I know Mr. Swank and Mr. Gray.

Q. I wish you would state whether you have prepared any compilation to shew the output of the principal competitors of the United States Steel Corporation, and if so, at what place and from what information.

A. I have compiled such a statement. I compiled that statement at the offices of the American Iron and Steel Association in Philadelphia, and I compiled that statement from the records of the American Iron and Steel Association in Philadelphia.

Q. When did you compile that statement?

A. Some time between the latter part of August and the first part of October, 1912.

Q. Do those companies whose output you compiled make returns to the American Iron and Steel Association?

A. Those companies make returns to the American Iron and Steel Association, as requested by such association, either annually or semi-annually, with respect to their output of raw, semi-finished and finished steel.

Q. Will you state whether or not the Steel Corporation through any of its officers obtained permission from the com-

panies whose affairs were thus to be disclosed to make that disclosure?

A. The president of the Steel Corporation, Mr. Farrell, wrote a letter some time previous to the latter part of August, 1912, requesting the various companies to whom they sent the letter to accord the Steel Corporation permission to use any and all figures with respect to production on file in the office of the American Iron and Steel Association.

Q. Will you state whether or not that permission was received from the companies shown here?

A. That permission was received from all the companies shown on that statement.

Q. Did you see the letters of permission yourself?

A. I saw the letters of permission. First I saw the letter making the request and then I saw all letters releasing the figures on file with the American Iron and Steel Association.

MR. DICKINSON: We except to his testimony in regard to those letters and their contents as incompetent and irrelevant.

(Here a paper was produced and marked "Defendants' Exhibit No. 96.")

By MR. REED:

Q. I show you Defendants' Exhibit 96, Mr. Winslow, and ask you who made that statement.

A. I compiled that statement.

Q. I am not asking you who did the typewriting of the draft that is presented here.

A. I abstracted the statement from the records of the American Iron and Steel Association.

Q. And did you prepare the copy from which the stenographer made this typewritten statement?

A. I prepared the copy from which the stenographer made the typewritten statement.

Q. Will you state whether or not this is a correct abstract of the returns made by these companies named in the statement to the American Iron and Steel Association?

A. That statement is a correct abstract of the records on file in the American Iron and Steel Association.

Q. Which originated from those companies?

A. Which originated from the letters sent in by those respective companies.

MR. REED: I offer in evidence Defendants' Exhibit 96.

MR. DICKINSON: This is excepted to as incompetent, hearsay and secondary evidence, being based, as shown by the witness, upon records in the office of the American Iron and Steel Association, made to that association, the witness not being the custodian thereof, and it not being shown that he had any knowledge with regard to the papers that he examined or their authenticity; and it is further excepted to because it includes the year 1911, and so much included in that year as embraces the period after the filing of the petition in this cause is excepted to as irrelevant.

(The statement referred to was thereupon marked "Defendants' Exhibit (Winslow) No. 96, June 25, 1913," and will be found in the volume of exhibits.)

By MR. REED:

Q. There seem to be a few of the companies named on the sheet which show a shrinkage in output from 1901 to 1911. Are there any special conditions affecting the relative showing which to your knowledge means that there has not been an actual reduction in the size or business of those companies?

MR. DICKINSON: That is excepted to as irrelevant, and also it is excepted to on the ground that the witness has not been qualified to speak in respect of the matters asked.

MR. REED: Of course you understand I am asking for your own knowledge, Mr. Winslow.

THE WITNESS: Yes. According to the records on file, records of production for the years 1901 to 1911, inclusive, with respect to three of those companies, namely the Central Iron & Steel Company, the Oliver Iron & Steel Company and the Maryland Steel Company, show that in the previous years the production as recorded for 1901 was generally maintained. I have a memorandum of the production for the years 1901 to 1911, inclusive, for those companies.

MR. DICKINSON: This answer is excepted to as far as based on the memorandum to which he refers, and the memorandum not having been produced and no opportunity being given to examine in respect to it.

THE WITNESS: I prepared the memorandum from the records on file in the office of the American Iron and Steel Association.

MR. DICKINSON: We except to this memorandum on the same grounds as those embraced in the exception to Exhibit 96.

MR. REED: I do not offer the memorandum in evidence.

By MR. REED:

Q. As to these three companies, the Maryland Steel Company, the Central Iron & Steel Company and the Oliver Iron and Steel Company, state whether or not the general average of their production during the years between 1901 and 1911 was higher than that for the year 1911.

A. I have never made that average, Mr. Reed, so I cannot testify as to that. The figures, however, can be averaged. I should judge by the appearance of the figures that they very closely approach the figures for 1901.

Q. Who computed the percentages of increase shown here in the last column of Exhibit 96?

A. I computed those percentages.

Q. I notice that the Bethlehem Company appears to have increased 2,019 per cent. in that decade; did you compute that percentage?

A. I computed that percentage.

Q. And Inland Steel Company increased 1,054 per cent.; did you compute that percentage?

A. I computed that percentage.

MR. DICKINSON: Let us understand that these same objections apply to these questions you are now asking.

By MR. REED:

Q. There seems to be some very large producers indeed, for whom no percentages of increase are shown, Mr. Winslow. What is the reason for that?

A. The reason for that is that the figures show a comparison between the years 1901 and 1911, and during the year 1901 those concerns for which no percentages are reported were not producers of the products recorded in this statement.

MR. REED: That is all. You may cross-examine.

MR. DICKINSON: We do not care to ask him anything.

GEORGE GORDON CRAWFORD,

a witness produced by the defendants, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION,

By MR. REED:

Q. Mr. Crawford, where do you live?

A. In Birmingham, Alabama.

Q. How long have you lived in Birmingham, Alabama?

A. Since the fall of 1907.

Q. Did you go there in November, 1907?

A. In November, 1907.

Q. What is your present occupation?

A. President of the Tennessee Coal, Iron & Railroad Company.

Q. Have you been president of that company since November, 1907?

A. I have.

Q. Where were you born, Mr. Crawford?

A. In Madison, Georgia.

Q. Where did you go to college?

A. I graduated at the Georgia School of Technology, and then I studied afterwards at one of the German universities.

Q. Which one?

A. At Tübingen.

Q. How long did you study in Germany?

A. I was there during 1891 and part of 1892.

Q. Had you been in the steel business prior to your studies in Germany?

A. No.

Q. When did you first enter the steel business?

A. When I first entered the steel business was when I went to Pittsburgh for the Carnegie Steel Company. I was with a company that was called the Sloss Iron & Steel Company before that, but they did not manufacture any steel.

Q. How long were you with the Sloss Company?

A. About three months.

Q. That was in Birmingham, was it?

A. That was in Birmingham.

Q. Then you went to Pittsburgh?

A. Yes, sir; I went to Pittsburgh.

Q. In what year?

A. In the fall of 1892 I went to Pittsburgh.

Q. What was your first employment there?

A. As chemist with the Carnegie Steel Company at the Edgar Thomson Works.

Q. How long did you continue as chemist at Edgar Thomson?

A. About two years.

Q. What was your next position?

A. I was in the engineering department.

Q. The same company?

A. The same company, the same works.

Q. How long were you in the engineering department?

A. Part of a year.

Q. Then what was your position?

A. Assistant to the superintendent of the blast furnaces, the same works.

Q. For how long?

A. About two years.

Q. And your next position?

A. I left the Carnegie Company to go to the National Tube Company at McKeesport in charge of their blast furnaces, and later on was given charge of the steel works consisting of a Bessemer Department and a blooming mill.

Q. In what year did you go from the Edgar Thomson

works of the Carnegie Steel Company to take charge of this National Tube plant?

A. 1897.

Q. And during what years did you remain with the National Tube Company?

A. I was there about two years.

Q. Then what was your next position?

A. I returned to the Carnegie Steel Company as superintendent of the Edgar Thomson blast furnaces.

Q. You remained there for how long?

A. I was there about two years.

Q. That brings us up to about 1901, doesn't it?

A. Along about there, yes.

Q. Then where did you go?

A. I returned to the National Tube Company.

Q. In what capacity?

A. Manager of the National Department.

Q. That includes the McKeesport works, does it?

A. Well, other works besides the McKeesport works.

Q. Tell us what other works?

A. It was the blast furnaces and steel works at McKeesport that I had formerly had charge of, and then there was what was called the old rolling mills department, comprising puddling furnaces and Knobling fires, muck mills and hammers, plate mills, skelp mills, tube and pipe mill furnaces, coupling forge and coupling tap departments, and a skelp mill at Riverton and galvanizing plant at Versailles and a plant on the south side of Pittsburgh where there were puddling furnaces and plate mills and so forth.

Q. How long did you remain with the National Tube Company? Until what year?

A. Until 1907.

Q. When you went with the Tennessee Company?

A. Yes, when I went with the Tennessee Company.

Q. While you were with the National Tube Company in this last period from 1901 to 1907, did you have charge of any construction or reconstruction work of any magnitude?

A. Yes; we reconstructed pretty much the whole of the National Department. We remodeled two blast furnaces and

built two new ones, and we added to the converting mill, built a new pumping plant and put in a new slabbing mill, and all of the old rolling mills were replaced with new and modern mills, and the tube and pipe mills were also reconstructed, and the Republic Iron Works on the south side was reconstructed.

Q. Have you been in Birmingham most of your time for the past six years?

A. Yes, I have been there most of the time.

Q. You have had charge of all of the improvement work that has been done by the Steel Corporation since it took the Tennessee Company?

A. Yes.

Q. When you first went there did you familiarize yourself with the condition in which the properties of the Tennessee Company were?

A. I did.

Q. I wish you would tell us, Mr. Crawford, first, the condition in which you found those properties of that company when you took charge in November, 1907. Tell us about both the plants and the organization. Generally speaking, what was the condition of the Ensley plant?

A. It was not in very good condition.

Q. Was it so equipped and so organized as to be able to make steel at what among steel men generally would be considered a reasonable cost?

Mr. Dickinson: I except to that as being indefinite and vague.

The Witness: It was not.

By Mr. Reed:

Q. Let us take first the blast furnaces at that plant. In what condition were they, Mr. Crawford?

A. Some of them were in better condition than others. But some of the furnaces that had been reconstructed, the furnace shell proper and the stoves, which were apparently good, had auxiliaries that were in such condition that the results that should have been gotten from them were not being gotten.

Q. Take the furnaces proper, the furnaces themselves: How many of them had been rebuilt or were in good condition?

A. No. 6, No. 5 and No. 4 at Ensley had been rebuilt.

Q. How about Nos. 1, 2 and 3 at Ensley?

A. They had not been remodeled, and were hand filled furnaces not in very good condition.

Q. How were the stoves of those furnaces?

A. The stoves at Nos. 1 and 2 were in very bad condition. I do not remember exactly about No. 3.

Q. The stove is a very important part of the blast furnace, is it not?

A. Yes.

Q. Did you have any unfortunate experience with the stoves of those furnaces when you went there?

MR. DICKINSON: That is excepted to as irrelevant.

THE WITNESS: There have been some accidents as a result of the stoves not being strong enough to contain the blast pressure.

By MR. REED:

Q. And men have been killed in that way?

A. Yes.

Q. How did you find the auxiliary apparatus about the furnaces? In good condition or bad condition?

A. They were in bad condition.

Q. Was there a proper and a cheaply operated blowing plant?

A. No. There were some new boilers that had been put in, but the main boiler supply of furnaces 1 to 4 was an old fashioned type and not in good condition, and they were burning large quantities of coal to produce steam for running the blast furnaces; and the consumption of steam on the blowing engines was very much larger than it should be, by reason of the fact that the engines were not only not in good repair, but they were disconnected compound engines, and they were using steam in the low pressure cylinders as if they were engines built to use high pressure. In other words they were not running as compound engines, but as simple

engines; and this made for very bad steam economy on the engines which had low pressure cylinders.

Q. To put it into a shape that we laymen can understand, what was the coal consumption at that point in the Ensley Works up until you took charge?

MR. DICKINSON: Excepted to as irrelevant.

THE WITNESS: It was at times over 4,000 tons a month.

By MR. REED:

Q. What is it at present?

A. Well, at the present time the blast furnace plant furnishes thousands of horse power steam to the steel works through a couple of steam lines that we built up there, and while we burn some coal, not any large amounts comparatively, at the blast furnace boiler houses, the surplus steam that is sent to the steel works is very, very largely in excess of that which would be produced by the amount of coal that is burned.

Q. About how much is that amount of coal?

A. I should say it would vary from 500 to 1,500 tons a month.

Q. And the power that you give to other departments from that boiler house more than accounts for your consumption of coal, does it?

A. Yes; very largely.

Q. Where do you get all the power for the operation of your boiler engines and the blast furnace work generally? I mean what fuel do you use?

A. The waste gases from the blast furnace.

Q. Was an efficient use of these waste gases being made prior to November, 1907?

A. I have been testifying with regard to furnaces 1 to 4. On furnaces 1 and 2 there was a more efficient use made of the waste gas in the boiler house than on the other group, but not in the engine house.

Q. By the utilization of those waste gases you have been able to save more than 4,000 tons of coal per month; is that a fair statement?

A. A very great deal more, yes.

Q. Let us go to the next topic. How about the water supply at that part of the works and at other parts?

A. The water supply was one of the greatest difficulties that we met with. It was very poor and inadequate.

Q. How did that tell upon the operation of the works; how did it tell upon the blast furnaces to begin with?

A. To protect various parts of the blast furnaces and open-hearth furnaces, it is necessary to have water-cooling appliances at many parts, and through those water-cooling appliances it is necessary to circulate water to absorb the heat from the metallurgical operations that would destroy those parts of the furnaces. Owing to the fact that the water supply was inadequate, got very hot and very dirty, these water-cooling appliances at the blast furnaces and open-hearth furnaces frequently burned out, stopping operations, interfering with metallurgical reactions and causing a partial discontinuance of operations until a new water-cooling appliance could be installed.

Q. Had any provision been made by the former owners of the Tennessee Company to install a suitable or sufficient water supply?

MR. DICKINSON: Excepted to as irrelevant.

THE WITNESS: They had contributed a small amount to get a report on the situation as to a water supply, which they hoped that the community would supply, but they made no effort to supply one for themselves.

By MR. REED:

Q. Had any appropriation been made by the former owners for the rebuilding of furnaces 1, 2 and 3 at the Ensley plant?

A. I do not know.

Q. Did you have an appropriation for that from the Steel Corporation?

A. Yes.

Q. And you rebuilt them?

A. They have been rebuilt, yes.

Q. At other points around the blast furnaces were improvements necessary when you went there?

A. Yes.

Q. Tell us some of the most important of them.

A. In the boiler house, that cost nearly half a million, twelve thousand horsepower; we put in condensers on all of the blast furnace blowing engines, and the power plant engines and cooling towers for cooling the water for the condensers, and we completed the stock yard by installing the blast furnace bins that had been planned by the previous administration, and then we planned and installed a crane for handling and stocking ore at the blast furnaaces. We put in new feed water pumps and heaters.

Q. Do you still charge those furnaces by hand?

A. No, the three furnaces that we have remodeled are skip filled furnaces, charged by machinery.

Q. Does that reduce the cost of operation?

A. Very materially.

Q. Did you provide a water supply for the blast furnaces and steel works?

A. Yes.

Q. What did it cost you?

A. Slightly less than a million and a half dollars.

Q. Had any appropriation been made by the Topping administration for providing a water supply of that kind?

A. No.

Q. Coming over to the steel works, a number of new open hearth furnaces had been built by the Topping administration, I believe, had they not?

A. Yes.

Q. Were they well designed?

A. Yes, they were.

Q. Good furnaces?

A. They were good furnaces.

Q. Was the apparatus which was meant to operate in connection with those furnaces sufficient to get the full capacity out of the furnaces?

A. Well, I presume the best answer to that is that some of them were and some of them were not.

Q. Take the ladles; were the ladles big enough?

A. They were big enough to get all out of the furnaces

that that administration evidently thought they would make, but we thought we could make 100 tons to the furnace, and we got 100 ton ladles and strengthened the ladle crane, and since then the crane has handled the ladles so that it would handle 100 tons at heat, and we have made 100 ton heats since that time.

Q. How many ton heats were made by the former owners with the same furnaces?

A. Well, the furnaces, the first four of them, I think they are rated as 50-ton furnaces, although the later two I think were rated as 65-ton furnaces. Those were under construction but not nearly ready. They were just putting in the foundation work for them.

Q. You are speaking of what they call 50-ton furnaces, are you, when you say that you got 100 tons from them?

A. An open hearth furnace usually makes more than the rated capacity. I think they probably would have made 60 or 70 tons each, possibly 75, those furnaces.

Q. Was it possible to operate those furnaces with the smaller heats as economically as it is possible to operate them with the large heats?

A. I think not.

Q. Did the water supply affect the operation of the open hearth furnaces, too?

A. Yes, sir; we had more trouble there than we had at the blast furnaces.

Q. During what season of the year in Birmingham was the water supply that used to be relied on by this company the most unreliable?

A. In the fall.

Q. Most of the trouble came at that period, did it?

A. Well, the water was scarcer then, and it was hotter then, but a great deal of trouble occurred in the spring because the water was very muddy then.

Q. What improvements did you find necessary at the open hearth works, about your lime, for one thing?

A. In the furnaces of that character it is found advisable to use lime for a flux instead of limestone, which is ordinarily used in the stationary furnaces run on the pig and scrap and

pig and ore process, and the lime was purchased from small producers of lime in various sections of the country thereabouts, and it was produced and delivered at a cost of about double what we have been making it for since we have put in a modern lime burning plant of cylindrical rotary furnaces and burned our own lime.

Q. Now, going over to the rail mill department. Did you find everything sufficient and up-to-date there?

A. No. At the time we took it over the old rail mill was running and it was not in a good state of repair and many of the facilities in connection with it were inadequate.

Q. How about the soaking pits, for instance. Did you have enough soaking pits?

A. No. There were not enough soaking pits. My recollection is that additional soaking pits had been planned and some money spent on them, but there were not enough.

Q. Did that deficiency in soaking pits have any effect on the operation of the rail mill, of the rolling mills at which the rails were made; that is, did it retard them or make their work irregular?

A. Yes; it would have that effect.

Q. Was the new rail mill constructed when you took over the plant?

A. The machinery had been ordered, but the machinery for the mill proper had not been installed. I think some of it had been delivered.

Q. Some of it had been delivered?

A. Yes.

Q. And some of it not?

A. Yes. I think there was some that had not been delivered.

Q. Did you have a good rail handling yard?

A. No, we did not.

Q. How much had been spent by the Topping administration on the Ensley blast furnaces and steel works up to the time that you took them over, Mr. Crawford; can you give us the approximate figure?

A. I do not believe I can remember, as segregated in that way.

Q. Have you any memorandum here that will refresh your recollection?

A. Yes, I have.

Q. Is this it?

MR. DICKINSON: We except to this as irrelevant.

THE WITNESS: At Ensley there had been spent $4,319,434.17.

By MR. REED:

Q. Does that four million odd include those water works that you testified about?

A. No, it does not.

Q. That is the expense of the Topping administration up to November 1st, 1907, is it?

A. That is at the Ensley division.

Q. How much have you spent at Ensley since November 1st, 1907?

A. $8,744,465.

Q. Does any of this eight million odd dollars that you spent include work that the Topping administration had planned to do?

A. It did not include any work that they had the appropriations for. Let me see: Yes, it did. The Topping administration had appropriations for about $6,500,000 in round numbers, and those appropriations overran $2,500,000.

Q. What does that mean, the appropriations overran?

A. It means that their estimates were short of what it actually required by that amount?

Q. The actual work cost about $2,000,000?

A. In round numbers about $2,500,000.

Q. More than they had appropriated for the expenditure on that work?

A. Yes, sir.

Q. Were all of those $6,500,000 appropriations to be spent at the Ensley works, or did that include the appropriations for the whole property?

A. That included their appropriations for the whole property.

Q. Do you know how much their appropriation for the Ensley works was?

A. Their appropriations, no, I do not remember how much that was. It was the major part of all of their appropriations.

Q. This $8,750,000 that you spent on the Ensley works included the remainder of the work that they had planned to do with the overruns on their appropriations, and also the new work that you did there?

A. That is correct.

Q. Now, in the ore mines, how much had the Topping administration spent putting them into shape?

A. $497,337.39.

Q. How much have you had to spend?

A. $1,257,732.08.

Q. What is the result as to the amount of ore that they could mine and you can mine; can you mine more than they could?

A. Yes, we can, and we had expenditures to enable us to do that that are not represented in these appropriations. We have been carrying on development work in our ore mines there, which has been very expensive.

Q. How about the coal mines?

A. They had spent $298,013.60.

Q. How much have you had to spend?

A. We had to spend $2,560,085.10.

Q. How do you make your coke now, Mr. Crawford, in beehive or by-product ovens?

A. We make it almost exclusively in by-product ovens.

Q. Who built those ovens?

A. Semet-Solvay Company.

Q. I mean which administration built them?

A. Our administration built the Koppers, but there were some ovens there that were built a very long time ago.

Q. Did the Topping administration build any?

A. They did not.

Q. Had they planned to build any?

A. They had not.

Q. Had they appropriated money for it, I mean?

A. They had not.

Q. How much have you spent on coke ovens alone?

A. $3,495,428.39.

Q. As to the water works you have answered that was about a million and a half, was it not?

A. That was $1,482,268.71.

Q. Have you found it necessary to do any work on the Birmingham Southern Railroad to put it in first class shape?

A. Yes; a great deal.

Q. How much had the Topping crowd spent to that end?

A. $177,375.33.

Q. How much had you had to spend?

A. $1,997,338.91.

Q. What is the total of the expenditures of the Topping administration to work the rehabilitation of that property up to November 1, 1907?

A. $5,412,532.15.

Q. That was within a million of the amount that they had appropriated for it, was it not?

A. Just about.

Q. Their appropriations were overrun about two million and a half, I think you have testified; is that right?

A. Yes; when the work was finished.

Q. What is the total that you have spent in putting that property in first class shape since you went there in November, 1907?

MR. DICKINSON: You mean everything?

MR. REED: I mean all that the Steel Corporation has spent.

MR. DICKINSON: You mean ore and everything else?

MR. REED: What the Steel Corporation has spent on the steel works, ore mines, and——

MR. DICKINSON: Including everything?

MR. REED: And all the properties.

THE WITNESS: The entire expenditures that have been made for the Tennessee Company I have not here divided just as the question has been asked, but the total expenditures that both administrations have made there have been——

By Mr. Reed:

Q. Give them approximately, if you cannot give them exactly.

A. $19,714,000.

Q. Does that include the amount spent by the Topping administration?

A. No.

Q. Take both administrations: How much has been spent altogether in putting the plants in condition?

A. $25,123,606.75.

Q. Mr. Crawford, if all these repairs and improvements and renewals were necessary, their costs could not have been very good there in 1907, could they?

A. They were not.

Mr. Dickinson: I object to that as irrelevant and leading the witness, and arguing with the witness.

By Mr. Reed:

Q. What was the mill cost to the Tennessee Company of making steel rails during the year 1907?

A. It was over $29 a ton.

Q. Does that include any general cost, administration cost?

A. No, it does not; that is mill cost.

Q. Does it include any depreciation?

A. It does not include any administration selling costs or depreciation.

Q. Does it include taxes?

A. Well, now, it included perhaps some depreciation on royalty on some raw materials that might have gone into it.

Q. But no plant depreciation?

A. No.

Q. Can you tell us what the average price received during that year by the Tennessee Company for its rails was?

A. I think it was less than $29.

Q. In other words, the mill cost alone exceeded the price received?

A. That is true.

Q. How did you find the organization at the Tennessee plants when you first went to Birmingham? Was it in good shape?

MR. DICKINSON: That is excepted to as irrelevant.

THE WITNESS: No; it was not.

By MR. REED:

Q. What is the necessity for a good organization in a steel works? Is it an important thing?

MR. DICKINSON: That is excepted to as irrelevant.

THE WITNESS: It is one of the most important things.

By MR. REED:

Q. Did you find the organization working in harmony when you went there?

A. No; we were not getting the co-operative efforts of the different groups to good advantage. This is a thing that is not understood by the layman, I suppose—how unusually difficult a steel works organization is to form. The element of the iron being hot and having to be worked while it is hot, introduces a complication that does not permit of delay without excessive cost; and in the iron and steel industry the organization has to function unusually well. There are different groups of men in different parts of the plant that have to co-operate with each other, and yet who are not under the charge of the same superintendent. There has to be an unusual spirit of co-operation between the different departments and different groups of the same department to avoid an excessive loss and cost of operation. It is of the very greatest importance in a steel works and blast furnace operation; and in the Tennessee Company it was further complicated by the fact that the raw material ends were working very close to the iron and steel works end, with no stock piles in between; and irregularities in the raw material end were reflected disastrously in the iron and steel works end.

Q. What was the quality of the practice there? Was the metallurgical work good in the open hearth works?

A. No, it was not.

Q. About what percentage of the steel that they attempted to cast for rail making was fit for use in the rail mill, fit to sell as rails?

A. They applied about approximately 65 per cent. of the heats they made to rail orders.

Q. That is, 65 per cent. of the heats that they were making for rail steel; is that what you mean? That was the only steel they made?

A. They tried to make as many rail heats at their open hearth as they could, and of the total heats made at the open hearth about 65 per cent. approximately they considered of the right composition to go into rails.

Q. Of that 65 per cent. was all the steel good?

A. Well, it was not uniform.

Q. Was their choice well made in every case?

A. No, in my opinion it was not.

Q. Now, to put the question a little more bluntly, were the rails that they turned out of uniformly good quality?

A. No, they were not.

Q. In proper steel works practice, Mr. Crawford, about how many rails may prove defective out of say 10,000 tons?

Mr. Dickinson: That is excepted to as a mere theoretical question, without showing the conditions under which they were made, and where and how.

The Witness: I have seen a lot of theories and heard a good deal of discussion about that. I do not know. I should say it might vary within what would be called good practice, ten to thirty failed rails per 10,000 tons laid in track.

By Mr. Dickinson:

Q. Failed rails?

A. Defective rails.

Q. You mean counting the number of rails?

A. Counting the number that would prove defective within a period of time, say of six months.

By Mr. Reed:

Q. From 10 to 30?

A. Those figures vary, of course, but that is approximately.

Q. You know the results obtained by other steel works?

A. Yes.

Q. You do?

A. Yes.

Q. Do other works attain the standard that you have just described?

A. Some of them do.

MR. DICKINSON: What period are you speaking of now? Has there been any change?

MR. REED: I am speaking of the year 1907 and of the present time as well.

MR. DICKINSON: Your question did not indicate 1907. It was in the present tense and his answers were in the present tense.

MR. REED: I am glad you called my attention to it.

By MR. REED:

Q. If there is any difference between that time and now please state what it is, or would the standard that you have given us be a fair standard to judge a performance in 1907 by?

A. I would not be able to answer that, because conditions change.

Q. About what was the performance of the rails manufactured by the Tennessee Company in 1907?

A. I haven't any information that would enable me to answer that in any figures, as to their rails as a whole. I have had occasion to know of a great many complaints of the rails they were manufacturing at that time in one of the plants, and I took the number of rails that we had to replace and figured it out to the basis of rails per 10,000 tons delivered, and it was about 130.

Q. About 130 per 10,000 tons?

A. Approximately 130 rails that were replaced per 10,000 tons delivered.

MR. DICKINSON: Do you mind showing at which plant it was in this connection?

MR. REED: They have only one plant that makes rails.

By MR. REED:

Q. You said a single plant. You meant a single order I presume?

A. Yes.

MR. DICKINSON: I would like to know whether those were made on the old mills or the new ones.

THE WITNESS: Those rails were made on the old mills.

By MR. REED:

Q. Were any rails made on the new mill in 1907?

A. No.

(Thereupon an adjournment was taken until to-morrow, Thursday, June 26, 1913, at 10:30 o'clock a. m.)

EIGHTY-FIFTH DAY.

EMPIRE BUILDING,
71 BROADWAY, NEW YORK CITY,
THURSDAY, JUNE 26, 1913.

Before Special Examiner JOHN ARTHUR BROWN.

Present on behalf of the United States, MR. DICKINSON and MR. COLTON.

Present on behalf of the defendants, MR. LINDABURY, MR. SEVERANCE, MR. BOLLING and MR. REED.

GEORGE GORDON CRAWFORD,

the witness under examination at the taking of adjournment, resumed the stand.

DIRECT EXAMINATION (Continued)

By MR. REED:

Q. In your testimony, yesterday, at page 11503 I notice the statement that furnaces No. 6, No. 5 and No. 4 at Ensley had been rebuilt. Is there any explanation that you wish to make in correction of that statement with regard to furnace No. 6?

A. Yes. Those furnaces were of a modern type. 4 and 5 had been rebuilt. No. 6 had never been rebuilt, but was constructed by the administration previous to the Topping administration as a modern furnace.

Q. I want to call your attention now to the orders for rails that were received in 1906 and 1907 by the Tennessee Company, from what are known as the Harriman Lines of railroad. I wish you would tell us what orders, and approximately for what tonnage, your company received from the Harriman Lines in 1906.

MR. DICKINSON: He was not connected with the company then, was he?

MR. REED: He was not.

MR. DICKINSON: Will you ask the sources of his information on this?

MR. REED: I will do it later, if you wish.

MR. DICKINSON: Yes; I think that should be done in this connection.

THE WITNESS: There were received from the Harriman Lines in 1906 orders by the Tennessee Coal, Iron and Railroad Company for approximately 53,000 tons of rails which were delivered in part during 1907. About 27,000 tons of this order was not delivered and was cancelled.

By MR. REED:

Q. Cancelled at whose instance?

A. I think it was cancelled for failure to deliver.

Q. Cancelled by the railroad company?

A. Yes.

Q. That would leave about 26,000 tons which were delivered. In what year were those delivered?

A. In 1907.

Q. When was the next order received from the Harriman Lines?

A. In the spring of 1907.

Q. And that was for how many tons?

A. That was for something over 150,000 tons; less than 160,000 tons. It is a difficult matter to state the approximate tonnage of a rail order, for the reason that the mill has the privilege of delivering five per cent. of seconds—second quality rails, on the order.

MR. DICKINSON: Five per cent., you say?

THE WITNESS: Yes. They have the privilege of delivering that amount. Sometimes they take advantage of it and sometimes they do not.

By MR. REED:

Q. What are second quality rails?

A. Second quality rails are rails which show some slight surface defect which is hardly injurious to their use as a rail, but which, out of an abundance of caution, are classed as sec-

ond quality rails, and usually used in such locations as side-tracks, and things of that kind, where the service on them is not so great as the main line service.

Q. Does that include rails that are piped and rails that are defective for other reasons?

A. No; it does not.

Q. I mean, seriously defective for other reasons?

A. It does not.

Q. Were all of that last order of rails delivered?

A. Yes, sir.

Q. At what time?

A. In 1908. I would say subsequent to 1907. I am not sure whether they were all delivered during the year 1908 or not.

MR. DICKINSON: They were all delivered subsequent to 1907, you say?

THE WITNESS: Yes.

By MR. REED:

Q. Was any part of that last order for rails delivered prior to the time that the Steel Corporation took over the Tennessee Company?

A. No.

Q. In the ordinary course of business about when would you, as an experienced steel maker, expect to receive reports of failures of rails delivered during the year 1907?

MR. DICKINSON: I object to that because it has not been shown that there is any system at all, or any standard or any accepted theory on that subject. If you ask for particular rejections, I think that is competent, but in order to ask the witness this question I think a proper foundation should be laid for it.

MR. REED: I think the question is proper.

By MR. REED:

Q. Will you answer, please, Mr. Crawford?

A. Well, sufficient time would have to elapse for the rails to reach their destination and be laid in track, and for the service to develop some of the defects, and for the reports

of the section foremen to reach, in sufficient numbers, the superior officers, and from them to be transmitted to the man in general charge of rail purchases, and from him to reach the manufacturer. A considerable period of time would ensue. It is rather hard to define it accurately, but I should say that a good many months would ensue.

Q. As a matter of fact, in this case of the rails that were delivered under the orders of 1906, that is to say, the rails that were delivered in the year 1907, when were the first complaints made by the Harriman Lines to the Tennessee Company as to the quality of the rails?

MR. DICKINSON: I object to that, because it has not been shown that the witness has any personal knowledge, or is in a position to know, when the first complaints were made, or whether it came to him by hearsay or whether it came after he was in charge or not.

By MR. REED:

Q. Will you answer the question, please?

A. I could not say when the first complaints were made. They came to my knowledge after I went down there in 1907.

Q. Soon after you went there?

A. Well, there were so many complaints coming in I do not know that I could identify these particular ones.

Q. Do you remember that complaints were received from the Harriman Lines about these rails?

A. Yes, and we sent a man out to the Pacific Coast to examine them.

Q. What was his name?

A. Willard Wilson, our assistant sales manager.

Q. Was Mr. Wilson, besides being a sales manager, a man of any experience in steel manufacture?

A. Yes; he had worked in the Ensley mills before he went into the sales department.

Q. Were the Harriman Lines satisfied with the quality of the rails delivered in 1907?

A. They were not.

Q. How did they show their dissatisfaction, if at all?

A. Well, we didn't get another rail order from them until

some time in 1909, and I received information that they objected to any more rails being delivered to them by the Tennessee Coal & Iron Company. I came down to New York to see Judge Gary, in order to get him to take the matter up with the Harriman people and give us a chance.

Q. And did you eventually succeed in getting an order in 1909?

A. Yes, we did. As a matter of fact, the rails that we made in 1908 were better than the previous rails, and the Harriman people were, I think, disposed to base some of their conclusions on the fact that we had made them some better rails, and returns from those rails were beginning to come in in 1909.

Q. Did you have to make any adjustment with them or take back any of the rails that were manufactured in 1907?

A. The rails were not actually taken back. A settlement was made with them on the basis of our being allowed the scrap value of the defective rails.

MR. DICKINSON: Defective rails as what?

THE WITNESS: The value of the defective rails as scrap.

By MR. REED:

Q. That was the same as taking them back, except that you saved the freight?

A. That is correct.

Q. You told us the other day what the performance of the Tennessee Company in getting good rail heats had been, and as I remember your testimony, it was that about sixty-five per cent. of the heats that were intended for rail steel were considered by the Tennessee management, prior to the Steel Corporation's taking hold, good enough for use as rails. I wish you would tell us now how far that condition was improved, and tell us, say about the first of 1909, what percentage of rail heats you were getting out of those heats which you intended to be used for rail steel.

A. May I explain this thing?

Q. Yes; or if I have not asked the question in an intelligent way, please correct me.

A. Well, rail steel is much harder to make than what is called soft steel. Soft steel is used for bars, plates and things of that kind, and in the old plant they tried to make as many heats of rail steel as possible, and when they missed a rail heat, so far as the carbon was concerned, they would run it down to a soft steel heat, and they were getting approximately about sixty-five per cent. of heats which they considered suitable for rails. When the new furnaces started up that practice still continued for some little time. I repeatedly took the matter up with those in charge and insisted upon better results, listening to their excuses, and being very patient with them, and finally did something that I do not like to do.

I brought the matter to a head by insisting on their getting a higher average, and set the figure at 90 per cent., and went so far as to instruct that the melters who did not get it should be discharged; and after losing a couple of men we improved the practice to where we would get about 90 per cent. of heats suitable for rails.

Q. Yesterday I asked you to give the amount of the appropriations of the Topping administration for the improvement of the different properties of the Tennessee Coal & Iron Company, and the amount by which the actual expenditures necessary to carry out that work exceeded the appropriations. You have stated it in round figures. Have you any memorandum now by which you could give us the exact figures?

A. The appropriations of the Topping administration were $6,650,117, and the over-runs on the appropriations referred to were $2,467,048.

MR. DICKINSON: Excuse me; what do you mean by over-runs?

MR. REED: He explained that yesterday.

MR. DICKINSON: It fell that much short?

THE WITNESS: It cost that much more to complete the work that was specified under those appropriations.

MR. DICKINSON: Than the money they had put in it?

THE WITNESS: Than the amount the administration estimated it would cost.

By Mr. Reed:

Q. What were the appropriations made by the Steel Corporation for further improvements from 1907, down to say 1911?

A. $17,205,191.

Q. How much were the overruns on those appropriations?

A. $660,240.

Q. Were there any under-runs?

A. Yes.

Q. How much were they?

A. $643,251.

Q. In other words the Steel Corporation guessed within $17,000 out of $17,000,000.

A. I would not like to undertake to do it again.

Q. You would not like to undertake to do it again?

A. No, sir.

By Mr. Dickinson:

Q. Did you call it a guess?

A. I would say that that was somewhat closer than would be reasonable to expect.

Q. I am just frankly asking you if you call it a guess, or was it an engineer's estimate?

A. It was not a guess, no, sir.

Q. That was the expression that was used. I did not suppose you were guessing at a thing like that.

Mr. Reed: I have had a little experience with architects, Judge.

Mr. Dickinson: I have too.

Mr. Reed: And I think "guess" is as good a word as they are entitled to.

By Mr. Reed:

Q. You testified yesterday something with regard to the by-product coke ovens that were already at the plant. What kind of ovens were they?

A. They were by-product ovens that were built by the Semet-Solvay Company.

Q. Who owned those ovens?

A. The Semet-Solvay Company did and does own them.

Q. In the course of whose administration of the Tennessee Company were they built?

A. It was previous to the Bacon administration. Mr. McCormack and Mr. Shook were in charge of the Birmingham end of it at that time.

Q. It was a considerable time prior to the advent of the Topping administration?

A. Yes.

Q. What type of ovens have you built since?

A. The Koppers type; the Semet-Solvay ovens are recuperative ovens, and the Koppers ovens are regenerative ovens.

Q. What is the difference?

A. There is a considerable difference in the surplus gas that is available after the gas which is used for coking the coal.

Q. Which gives the greatest saving or recovery of surplus gas?

A. Well, in our case the regenerative oven does.

Q. That is the Koppers oven?

A. The Koppers oven.

Q. Those built by the Steel Corporation?

A. That is true.

Q. Can you give us any measure or idea of the economy in coal consumption that has been attained by the new type of ovens that the Steel Corporation has put in?

A. Well, the yield of coke per hundred tons of coal is about 72 per cent. as against 59 or 59½ in the beehive oven, and there is a saving of fuel in addition to that by reason of a surplus of gas above that needed to run the oven of approximately 6,000 cubic feet to the ton of coke, and these are equivalent, to express it in terms of coal, to almost one-half a ton of coal per ton of coke produced.

Q. As against the former bee-hive oven practice?

A. Yes. In addition to that, there are savings of considerable quantities of other valuable by-products. Over thirty pounds of sulphate of ammonia are manufactured from the

ammonias that are in the gases, and a considerable quantity of tar.

Q. About what tonnage of coke do you produce from your Koppers ovens each year now?

MR. DICKINSON: We except to that as irrelevant.

THE WITNESS: They are now running at the rate of about 1,200,000 tons per annum.

By MR. REED:

Q. Did the Topping administration use some bee-hive ovens?

A. Yes; they used over 2,000 of them.

Q. About what percentage of their coke was produced in the bee-hive ovens?

A. Well, I should say approximately sixty-five or seventy per cent.

Q. Do you use bee-hive ovens now?

A. We have had a few in use during a recent boom in the pig iron and steel market, and we have had to keep a small number in use to supply some coke on some contracts where purchasers of the coke were unwilling to accept other than that which was specified in their contract, but we have a very small number.

Q. When were your Koppers ovens finished?

A. They began to make coke about a year and a half ago; they were not all finished at that time.

MR. DICKINSON: That is excepted to as irrelevant.

By MR. REED:

Q. What percentage of the coke that you have used at your blast furnaces has been made in the bee-hive ovens since the Koppers ovens came into use there?

A. A very small quantity, and that only because we put in some furnaces that we ordinarily do not run on account of their high cost of production; the higher cost of pig iron tempted us to put those furnaces in.

Q. Under ordinary circumstances you make all your coke for furnace use in the by-product ovens?

A. That is correct.

Q. Can you give us in money the approximate saving which is thus made on each ton of coke?

MR. DICKINSON: Excepted to as irrelevant.

THE WITNESS: Well, we are making by-product coke for more than a dollar a ton cheaper than we were making bee-hive coke.

Q. Have you effected any other savings of natural resources there since you took hold of the property in 1907?

A. We are not using as much coke to make a ton of pig iron in the furnaces.

Q. Have you made any saving in the amount of lumber consumed, for instance?

A. Yes.

Q. I wish you would describe what has been done in that direction.

MR. DICKINSON: That is excepted to as irrelevant.

THE WITNESS: When I went down there I found that our timber supply did not look to be abundant; and I sought the assistance of the Forestry Department to see what could be done; and they agreed to send two of their experts down to make a report on our properties, provided we paid their expenses; and they told us that in our mines, in many places the high humidity of the air was permitting fungus growths on our timbers that were giving us a life, in many cases, of less than three years, and that if we would creosote the timbers, we could expect a life of about fifteen years; and that if we creosoted the loblolly pine and red oak, they could be used for many purposes for which we could not use them without creosoting; and that with our present methods of using our timber, we had an approximate supply of about seven years, and that if we creosoted the timber and observed more intelligent methods of forestration, we could have an indefinite supply. We built two creosoting plants, and have been creosoting most of our timber since then, and we are preserving the forest, which they recommended as the best one to be taken care of.

(At the request of Mr. Reed, the stenographer marked a paper "Defendants' Exhibit No. 97.")

By Mr. Reed:

Q. I show you Exhibit 97, Mr. Crawford. That is the memorandum you used yesterday in testifying with regard to the expenditures on the properties, is it not?

A. Yes.

Q. Is this a correct memorandum of those expenditures?

A. Yes.

Mr. Reed: I offer Defendants' Exhibit No. 97 in evidence.

Mr. Dickinson: That is objected to as secondary and as covering a period subsequent to October 26, 1911.

(The paper referred to was thereupon marked "Defendants' Exhibit (Crawford) No. 97, June 26, 1913," and will be found in the volume of exhibits.)

By Mr. Reed:

Q. Mr. Crawford, I wish that you would describe for us the general advantages and the general disadvantages of this Birmingham district. In what respects does it have an advantage over other iron and steel producing districts in this country?

A. The principal advantage of the Birmingham district is the proximity of the ore, coal and flux to each other.

Q. Within what radius are those three materials found?

A. The air line distance between the ore outcrop and the coal outcrop is, I suppose, not more than five miles; four and a half or five miles at the nearest points; and the flux is to be had in the valley between those out-crops, although practically it is brought from some distance up the valley to our operations.

Q. In actual experience there, taking your own company's works as illustrative, what is the ordinary haul for the ore from the mine to the furnace?

A. It is short, but it is carried a rather roundabout way, and that makes it longer than it ought to be. I should say less, however, than 25 miles.

Q. Would the haul on the coal be less than 25 miles also?

A. Very much less. Some of the coal mines are quite close to the furnaces.

Q. And the haul on the limestone would be still less, I should judge?

A. No. In our plant the haul on the limestone is, I should say, eight or ten miles. I should correct that and say on the dolomite it is eight or ten miles. They use dolomite as a flux in the blast furnaces instead of limestone.

Q. All of those hauls are substantially less than the hauls in the northern iron districts, are they not?

A. Very much less.

Q. Is there an advantage that the Birmingham district has in the quality of some of its ores, in regard to their lime content?

A. I would not say that even with their lime content they are as good as the ores from the Lake Superior District.

Q. I put my question in an unfortunate form. Do the Birmingham ores have an advantage in containing substantial quantities of lime?

A. That is true. They are more valuable than ores of a similar iron content would be with a lesser quantity of lime or none at all.

Q. What other general advantages has this Birmingham district?

A. There is such a mixture of advantages and disadvantages it is difficult to strike the balance.

Q. I am not asking you to strike the balance, but just to mention some of the advantages.

A. There is an advantage in the absence of a severe winter, but there is a disadvantage in the exceedingly long summer we have.

Q. Take that matter of climate, do you find that your labor is as efficient there as it is in the North?

A. The labor is not as efficient as in the North.

Q. Now, coming to the disadvantages. Are there any disadvantages with regard to the iron content of the ore?

A. It is low compared with the Northern ores from the Lake Superior district.

Q. How does that ore run in iron content?

A. Approximately 36 per cent.

Q. In 1907, when you left the Pittsburgh district to go to Birmingham, how was your ore running in iron content as you received it at the Pittsburgh district?

A. I should say about 56 or 57 per cent.

Q. Are you giving both of these percentages on the same basis; that is, both dry or both moist?

A. In the natural state.

Q. Would the relative disadvantage of the Birmingham ore be any greater, if you were to state the figures for the dry analysis?

A. The ores that were used in the Pittsburgh district would show a higher iron content on the dry analysis.

Q. How about the Birmingham ores?

A. There would be a very slight difference, as these ores carry a negligible quantity of moisture.

Q. Now, how are the ore deposits of the Birmingham district, from the standpoint of easy mining?

A. They are very difficult ores to mine.

Q. Why?

A. They are hard; they have to be drilled and blasted, and the deposits are on an angle which is not flat enough to permit the ores to be trammed to a central hoisting station, and the deposits lie on an angle which is not steep enough to permit them to slide to a central hoisting station; they are mined by slopes which are driven from the outcrop at approximately right angles to it, down this angle, and in our mines we use skips, large steel skips, which stop at various cross entries where the ore is mined, and brought to this slope and dumped into the skips, and the amount of time which is lost in hoisting by the skips having to stop at all of these different entries and wait to be filled is so very great that the production from each slope is relatively small compared with the amount of hoisting machinery, pumps and air compressors and all kinds of equipment that they have to provide for each slope. If the ore were in such condition that it could be assembled at a central hoisting plant, we could mine the same quantity of ore with a great many less mines or installations of expensive equipment than we have.

That is not all. Geologically the Clinton ore deposit was, before that great disturbance which brought it to the surface in the Birmingham district, very deep, more than a mile below the coal measures, and the tremendous convulsion of nature which brought it to the surface, did more than produce the great fault; it produced a great many other faults of a secondary nature, and from time to time we strike these faults in our mining operations and have to stop mining and come back to the surface and start an entirely new slope, to strike the ore at points 100 or 150 feet down below where we lost it, and in other words, have to do all our development work over again with the disadvantage of having to go down through the soil without any ore recovery from it as we go down, which the original owners had when they started in on ore from the outcrop.

Q. I neglected to ask you how the analysis of your Birmingham ore ran in phosphorus?

A. Well, the pig iron made from it runs about one per cent. of phosphorus.

Q. Beyond the Bessemer limit, isn't it?

A. Oh, yes, one-tenth of one per cent. in the pig iron is the Bessemer limit.

Q. And the phosphorus content of the Birmingham pig iron is about ten times the phosphorus content that is permissible in Bessemer iron? Is that the correct way to put it?

A. That is right.

Q. And that drives the manufacturer of steel in the Birmingham district, I assume, to the open hearth process?

MR. DICKINSON: Has the witness said that?

MR. REED: I assumed it was so much a matter of course that I am leading him, but if you object to it I will ask him.

MR. DICKINSON: I would just like him to say one way or the other. He has not said.

THE WITNESS: There are two Bessemer processes. There is the acid Bessemer and the basic Bessemer. These ores contain too much for the acid Bessemer process and not enough for the basic Bessemer process, and they contain so much more phosphorus than the manufacturers of open hearth steel

in the northern district like that the duplex process is used in the Birmingham district, which consists of a combination of the Bessemer process and the open hearth process.

Q. That is of the acid Bessemer process?

A. It is a mixture of the acid Bessemer process and the basic open hearth process.

Q. The basic Bessemer process is not in use anywhere in the United States now is it?

A. No, not at the present time.

Q. How is your labor supply in Birmingham as compared with the north?

A. Well, the supply of intelligent labor suitable for training for skilled positions is very much poorer than it is in the North.

Q. How about the reliability of your labor, Mr. Crawford?

A. It is very much less reliable; about half of it is negro labor. I do not want to criticise the negro; he has my sympathy rather than criticism, but he is not as a rule reliable. Some of them are, but the percentage is very small.

Q. I am asking you of course only as to steel works and blast furnaces. Do you find the negro a good reliable laborer as a whole in that kind of work?

A. As a whole, no; there are some positions where we can use him and some where we cannot. We do not use him where we can avoid it.

Q. You do not mean, of course, to speak of his fitness for any other kind of labor or any other place?

A. No.

Q. Is there any disadvantage that the Birmingham district is under because of any limited consumption in its district? If so, what is it?

A. Yes; that is the greatest disadvantage the Birmingham district is under. The supply of raw materials there is so much greater than any market which hitherto has ever been developed for the products, that they have to ship their products, or a large portion of their products, so far that it has discouraged the development of the iron and steel industry to

the proportions that the raw materials that exist there would indicate that it might be developed.

Q. Is the consumption of steel products in the South on the increase at the same rate as the consumption in the North is on the increase?

A. The South is more largely devoted to agricultural pursuits, and they do not manufacture products that consume steel to the extent that is done in the North, and the market for steel is not as great as it is in the North.

Q. Does the southern consumption of iron and steel products appear to be growing as fast as the northern consumption?

A. No, it does not.

MR. DICKINSON: I would like to know whether you mean in tonnage; is it growing as fast in tonnage or what, so that I can appreciate what the question and answer mean.

By MR. REED:

Q. Just explain your answer, will you please, Mr. Crawford?

A. I do not think the consumption of iron and steel products in the South is growing as fast as it is in the North in tonnage or percentage either.

Q. When this excess production has to be shipped to other markets, where are those other markets usually found?

A. In pig iron the markets have been largely points north of the Ohio River.

Q. What freight rates have to be paid on that iron to get it there?

A. Well, the freight rate to Chicago, where a lot of it is shipped, is $4.35.

Q. What is it to Cincinnati?

A. I do not remember the rate to Cincinnati. We happen to not ship a great portion of our product there. I have a memorandum——

Q. I think it has been proved by another witness. Another matter: Can you make your own ingot molds and your own rolls in Birmingham?

A. We have been experimenting on making our own ingot

molds. Ingot molds are usually made of Bessemer iron, and it has been the practice to buy our ingot molds in the northern district. That has been quite a disadvantage in our cost of producing steel, because in the northern mills the size of ours, the ingot mold foundry would make an ingot mold of Bessemer iron, and after using the ingot mold for casting the ingots until it became no longer fit for the purpose, after 75 or 100 heats, that ingot mold would be used to make Bessemer steel of, and the cost of it would simply be the conversion cost of the molten iron direct from a blast furnace poured into the mold in which the ingot mold is made, and it is very slight, probably not more than five cents per ton of ingots produced.

Now, with us that mold is purchased in the North and shipped a long ways, with five or six dollars a ton freight on it, and when we get through with it as a mold the Bessemer iron of which it is composed has not the value of Bessemer iron in the district where we paid for it. It only has a value of scrap based on the value of iron in the Birmingham district; and our costs in 1907 were over half a dollar a ton on ingots.

MR. DICKINSON: I except to the answer as being a long description of something that has no reference at all to the question as asked.

By MR. REED:

Q. Then, Mr. Crawford, if I understand your testimony aright, the northern manufacturer was paying about five cents per ton of steel on account of his ingot molds, while the southern manufacturer in 1907 was paying over fifty cents per ton?

A. That would be true in the case of a manufacturer who had his ingot mold foundry.

Q. Can you tell us how many ingot mold foundries the Steel Corporation has in the North? Or, if you do not know them all, tell us the locations of some of them.

A. There is one at South Chicago, one at Lorain, Ohio, one at the Edgar Thomson works, Pittsburgh. I was on the

committee that recommended one at Youngstown, Ohio, but I don't know whether that was built or not.

Q. What is the freight rate from Pittsburgh to Birmingham on ingot molds?

A. $5.94 a ton.

Q. What is the rate from Chicago to Birmingham on ingot molds?

A. $4.59. Those are gross tons.

Q. As to rolls: Are rolls made in Birmingham?

A. No.

Q. Where do you have to get your rolls?

A. We have to get them from the northern district.

Q. That is from Pittsburgh or Chicago?

A. Yes; the district in which Pittsburgh and Chicago are located.

Q. What is the freight to Birmingham from Pittsburgh on rolls?

A. $10.08 per gross ton.

Q. What is the rate from Chicago to Birmingham on rolls?

A. $8.96 per gross ton.

Q. Can you give us any idea of the increased cost per ton of steel for the Tennessee Company in 1907 because of having to import its rolls?

A. It would be an approximation.

Q. Give us some approximation. Would it amount to a cent a ton or ten cents a ton, or fifty cents a ton?

A. It would be nearer a dollar a ton.

MR. DICKINSON: Increased cost over what?

THE WITNESS: I was giving my opinion about what the cost of ingot molds plus rolls together would be.

By MR. REED:

Q. In the south?

A. Yes.

Q. About what would it be in the north, in a concern that had its own ingot mold foundry, but bought its rolls,—per ton of rails?

A. I should say it would be less than 35 cents.

Mr. Dickinson: As I understand, you are only asking about the increase that comes from those two items? Is that it?

Mr. Reed: That is all.

Mr. Dickinson: That is, rolls and ingot molds?

Mr. Reed: Yes.

By Mr. Reed:

Q. Now, Mr. Crawford, is there any advantage to the northern district involved in the Bessemer and the open-hearth processes being operated in close proximity to one another?

A. Yes, sir.

Q. What is it?

A. Well, in the Bessemer process and the basic open-hearth, the ingots are rolled in various semi-finished and finished forms, and about approximately twenty per cent. would be discarded in the form of scrap. The Bessemer process is not a desirable scrap using process. The open-hearth process is a desirable scrap using process, and in a district where a large part of the steel, say approximately half, would be made by the open-hearth process and half by the Bessemer, about 40 per cent. of scrap would be available for the mixture in the open hearth furnace, and that is steel already, in regard to composition, and in the Birmingham district, where we have only the duplex process, we have only about half as much of the material with which we begin the open-hearth operation in the form of steel scrap.

Q. Is there some advantage also in the use of your recarburizing agents in the north?

A. Yes; a very considerable advantage. We have no available low phosphorus ore——

Q. You mean in Birmingham?

A. In Birmingham, or low phosphorus pig iron, or materials to make spiegeleisen. We have to try to catch the carbon in our heats as high as we can, and add what is necessary to the bath in the ladle in the form of coke dust, to make the carbon in the steel as high as is desired.

In the northern district the high carbon steels such as are

used for rails are recarburized, either by using Spiegeleisen, which contains approximately from 75 to 85 per cent. of iron —there are several grades of Spiegel—or a low phosphorus pig iron is used to recarburize. Now, all of the iron which is used for recarburizing purposes is poured into a ladle into which the metal from the open-hearth furnace is cast, and that iron in the recarburizer becomes steel in the ladle without having had the expense of going through the open-hearth furnace, and by reason of not having a low phosphorus ore or low phosphorus iron to be used for that purpose, we are debarred from getting a portion of our steel manufactured by this process in the ladle, as it were, and without the expense of having had to put it through the open-hearth furnace.

Q. That, of course, tells against you in the cost of your product?

A. It does.

CROSS EXAMINATION,

By Mr. Dickinson:

Q. You have been asked a great many details and have testified in respect of the drawbacks and disadvantages in the Birmingham district. Among them you specified the hardness of the ore, the dip or tilt of the strata of ore, the character of labor that you had in comparison with labor that you had elsewhere, the fact that ingot molds had to be purchased elsewhere and carried there, and that rolls had to be purchased elsewhere and carried there. I believe you stated you were from Georgia?

A. Yes.

Q. Were you familiar with the Birmingham district before you went there to take charge in 1907?

A. I had spent three months in the Birmingham district many years before.

Q. Did you know at the time you took charge of the works of the Tennessee Coal, Iron & Railroad Company, after the acquisition by the United States Steel Corporation, the character of the ore and the situation of the ore and the metallic content as compared with ores elsewhere, and also the char-

acter of negro labor and the distances over which the ore and coal and limestone would have to be transported?

A. I did.

Q. Were those facts generally known to people in the iron and steel business at that time, those who were well informed?

A. I think some of them were and some of them were not.

Q. Now, which were not known?

A. I think that they did not know the difficulties in the way of securing the raw materials in the Birmingham district.

Q. Hadn't that district, before 1907, been operated by the extraction of iron ore for a long time, and over quite an extensive area?

A. That is true, but what was not known about it then that is known about it now, so far as my experience is concerned, was surprising. I mean to say that there were superficial impressions about it that did not represent the facts as they existed.

Q. In what respect?

A. For instance, in respect to the cost of mining, mining the average of a large area of coal, for instance, as compared with costs that had been obtained when they were not working under conditions that had to be met with in the future rather than the conditions that had been met with in the past. When they were working from near the outcrop they could get figures of cost very much better than they got as they got farther into the mines.

Q. Had all the operations of the Tennessee Coal, Iron & Railroad Company prior to the time you took charge been a mere working of outcrop? Had there not been shafts sunk?

A. There were no shafts in the ore mines.

Q. There were drifts, were there?

A. Slopes.

Q. How far had they gone in on the slopes from the outcrop?

A. They had gone various distances.

Q. Can you specify the distances? In other words, was it mere outcrop mining up to the time you took charge?

A. No; they had gone appreciable distances in the ore mines.

Q. At that time?

A. At that time.

Q. Taking these disadvantages that you have spoken of in the Birmingham district, and the advantages that you have spoken of in the Pittsburgh district, state whether in 1907, and down to October 26, 1911, pig iron could be made, taking everything into consideration, cheaper at Birmingham or cheaper in the Pittsburgh district.

A. Was being made or could be made?

Q. Could be made; I mean with intelligent operation?

A. That would depend on how much you are willing to spend; the possibilities of reducing cost are very great, depending on how much you are willing to spend on the equipment.

Q. Suppose you had just exactly the same degree of intelligence operating there, and the same character of works that you would have in Pittsburgh, and only contrast the natural advantages and disadvantages, then what would your answer be?

Mr. Bolling: The witness has called attention to the fact that it was the difference in the amount of investment, and you have not mentioned that in the question.

By Mr. Dickinson:

Q. I am assuming those conditions to be the same?

A. May I answer it in this way?

Q. I would like you to answer it and explain it just as you want to. Answer it in your own way?

A. At the time I went there the costs of making iron were higher than they were at the furnaces that I had charge of at McKeesport, but we have since that time made iron there cheaper.

Q. In Birmingham?

A. In Birmingham.

Q. Did you notice my question was not merely as of 1907, but it was as of October 26, 1911?

A. At that time we were making iron cheaper.

Q. In Birmingham?

A. In Birmingham.

Q. Than they could make it in the Pittsburgh District?

A. I would not say than they could make it.

Q. Well, than they were making it?

A. Than they were making it.

Q. There is no section of the country, is there, where there is higher intelligence or higher development in the iron and steel business than there is in the Pittsburgh District, is there?

A. There were districts that I know of that were making cheaper pig iron than in Pittsburgh.

Q. What district was that?

A. At Lorain.

Q. How much cheaper than at Pittsburgh were they making it?

A. I think approximately 75 cents to a dollar a ton, to my best recollection.

Q. Were you ever at Lorain?

A. Yes.

Q. Were you stationed there?

A. I have visited it in the discharge of duties on committees that I served on in the Steel Corporation; I was there with a blast furnace committee.

Q. Then since it was operated by the Steel Corporation you say Lorain has made iron; did it make steel also cheaper than in the Pittsburgh District?

A. Yes.

Q. You say 75 cents to a dollar a ton on iron or steel?

A. I was referring to pig iron.

Q. Take steel, how would it be?

A. They make ingots cheaper.

Q. Make them cheaper?

A. Yes.

Q. How much cheaper at Lorain than in the Pittsburgh District?

A. I could not say as to that.

Q. What do you attribute that difference to, is it in the character of the works?

A. Judge, there is seldom any one thing that you can pick

out. You can pick out a great many things that are contributory.

Q. And a great many things have been picked out in regard to the Birmingham district, now I want to pick out some things in regard to the Lorain district, and if you know what makes that differentiation there I would be glad to know. If you don't know please say so.

A. I think I know in a general way.

Q. State it, then, please.

A. The cost of assemblage of ore and coke is less at Lorain than it is at Pittsburgh per ton of iron produced, and that would have a corresponding effect on the steel.

Q. Now, Mr. Crawford, in 1911 what was the comparative cost of making a ton of steel in Birmingham and Pittsburgh?

A. The cost of making a ton of steel in Birmingham in 1911 was greater than it was in Pittsburgh.

Q. How much greater?

A. Well, to the best of my recollection it would be—I am speaking of ingots—between one and two dollars a ton greater.

Q. Was it nearer a dollar or nearer two dollars?

A. Of course in 1911 I was not in the Pittsburgh district. I am trying to give you some figures that I have seen on some cost sheets.

Q. Of course I am only calling for what you feel you have a reasonable ground for speaking with knowledge of. I am not asking you for any hearsay that you may have gotten, because I do not think that is a proper source for an answer. I am asking you what you know, and I am willing you should testify to what you do know.

A. I should say that it was at least two dollars a ton.

Q. On what do you base that statement, because I call for an answer based upon knowledge that you yourself had. Of course you know your own costs.

A. Well, I know what they are at times, and I could make an estimate of them pretty close from my general knowledge, perhaps.

Q. Are you speaking of the Tennessee Coal & Iron?

A. Yes, Tennessee Coal & Iron costs from time to time.

Q. What did it cost you in 1911 to make a ton of steel in your works there at Birmingham?

A. Just at that particular time I do not know that I could come very close to remembering what it was.

Q. Then, if that is so, you could not very well compare with any degree of accuracy the cost between that and elsewhere, if you do not know your own costs, could you?

A. Yes, but I do know my own costs. I say I cannot remember at that particular time just what they were. My idea was based on my general knowledge.

Q. But your general knowledge does not enable you to give the cost to your company of making steel in 1911; is that the fact or not?

A. I could not give it exactly or of my general knowledge. I can give you my impression of what it was.

Q. Can you give me the cost in 1911, after you then had installed your new mills, the cost of making steel rails in the Birmingham district?

A. For that particular year I could not.

Q. Can you give it for 1910?

A. I do not think I could for any particular years except one that I remember, 1907.

Q. You did not make those?

A. Part of them.

Q. You are speaking, now, of the cost after you undertook the operation or the cost of these Harriman rails that were delivered under the operations of the old regime, the Topping regime?

A. For the month of December we had charge for the whole month, and we made up the cost sheets for the month of November; and the costs previous to the month of November were made up by the Topping administration. Then the costs for the year 1907 were made up by ourselves.

Q. You could give the costs to the Topping people in 1907, could you? I am just asking whether you could.

A. The Topping people and ourselves.

Q. And yourselves?

A. Yes. We were each responsible for costs that went into the average for the year.

Q. Oh; and you were speaking, then, of the average for the year?

A. Yes.

Q. But you cannot give the cost of any year after 1907 when you were solely in charge?

A. I have not been so interested in the costs for the other years, because the costs of the Topping administration marked an era, and I remember particularly seeing what the starting point was from which we were going to work. I have not, by years, particularized the costs in my memory on the other years.

Q. Did it not mark an era also in your operations when you reduced the costs as compared with the Topping administration?

A. The reduction has been gradual since then.

Q. Since the Topping administration, your people have spent something like $19,000,000 there in the Birmingham district developing those properties and preparing to make iron and steel, have they not?

A. Yes, sir.

Q. I would infer, from the disadvantages that you emphasize, that you really do not think much of the future of the Birmingham district. Is that a correct inference?

A. It is a low grade proposition, and the only way that they could save what had been put in there was to work it on the basis which low grade propositions necessitate, namely, the most efficient mechanical methods for handling materials on a large scale; and the future, if you wish me to express an opinion of it, of the Birmingham district, is one that can be made not like the rosy pictures that I have heard drawn of it, but a reasonably good business proposition.

Q. I do not know anything about the rosy pictures, Mr. Crawford, and I suppose that those were pictures drawn in prospectuses and Fourth of July orations made by candidates for office, but I am speaking, now, taking into consideration the advantages and disadvantages of the Birmingham district of which you have spoken, in the way in which you have described them—whether it is a fair inference from your

testimony that you think the Birmingham district, as an iron and steel center, has a poor future or not.

A. I think poor as a relative term. I do not think the future is as good as that of other iron districts that I know.

Q. You said "iron districts." What do you mean by "iron districts?"

A. I would say the Chicago district.

Q. You mean where iron is made or where iron is brought from?

A. Where iron is made.

Q. Where iron is made? That is what you mean?

A. Yes.

Q. Comparing it with what other districts is it at a disadvantage?

A. Pittsburgh.

Q. You say you can make iron cheaper in Birmingham than they can in Pittsburgh?

A. That is true.

Q. And is there not a large section of country that is tributary to the Birmingham district which is developing in population and wealth and has been constantly for a number of years, to which the Birmingham manufacturers would be, upon the point of railroad rates, in a more advantageous position than the Pittsburgh district will?

A. In answering that question, to tell the facts, I think that I would like to mention another district in connection with Pittsburgh.

Q. You can answer my question and then mention the other district, if you want to.

A. Pittsburgh has an advantage, taking into consideration its cost of manufacture and its market.

Q. Now, I understand your answer to be that the Pittsburgh district has an advantage even as to the territory that might be nearer with respect to rail rates, to the Birmingham district?

A. A proportion of it. Now in respect to rail rates——

Q. (Interposing) My question was——

A. (Interposing) I misunderstood your question. Pardon me. With respect to rail rates of course the Birmingham

district has an advantage over Pittsburgh; certain points that are closer to Birmingham have lower rates than Pittsburgh.

Q. Is it not a fact that beginning after the period of prostration following the Civil War and the destruction of property incident thereto, and the reconstruction period in the South, there has been a recuperation steadily going on, and an increase in the growth of the cities of the South, and a gradual development along all lines of industry?

A. That is true.

Q. And is there not every reason to believe that with the development of the South, as indicated by its progress in the last few years there will be in that section a largely increasing demand from year to year for iron and steel products?

A. Yes, that is true, but the actual production of iron in the southern district has not increased in the ratio that would be expected by the growth of the South in other directions.

Q. That is, you mean to say that in some lines of development its progress has been more rapid than it has been in manufacturing and in the consumption of things into which iron and steel enter?

A. In the production of pig iron from about 1902 to 1908 and 1909 the production of the southern district was almost stationary.

Q. What period was that?

A. From 1902 to about 1909.

Q. The production of pig iron?

A. The production of pig iron in the southern district.

Q. Now, my question was not as to what the consumption had been, but my question was addressed to you from your knowledge of the situation there, and the conditions, and the present prospects and outlooks for growth and development, whether or not there is every reasonable ground to expect that there will be a continuing increase in the South in the demand for iron and steel products?

A. That is true, but I was trying to explain that the production of iron was already more than that district was able to consume, and a great deal of it had to be shipped out.

Q. I will read from a meeting of sales managers of the United States Steel Corporation at New York, November 1st,

1908, Government Exhibits, Vol. II, page 632, where the following is recorded: The Chairman was Mr. H. P. Bope.

"Increased finishing capacity Tennessee Coal, Iron & Railroad Company.

"The Chairman called attention to a map recently prepared by Tennessee, a copy of which has been sent to all Constituent Companies, which indicates that all the territory south of practically a straight line from Norfolk across the country, including the Pacific Coast, could be supplied from Birmingham as well, or better, than from Pittsburgh or Chicago, based upon common freight rates."

Is that true as stated there? I do not mean whether the map shows it, but is it true as stated there, that all the territory south of practically a straight line from Norfolk across the country, including the Pacific Coast, could be supplied from Birmingham as well or better than from Pittsburgh or Chicago, based upon common freight rates?

MR. REED: I object to the use of this minute or exhibit on cross-examination of the witness, it not appearing that he was present or had any part in the transaction or had any part in the preparation of this map.

MR. DICKINSON: I am not asking whether the map is true; I am just asking the witness whether that statement is true or not, and if not, I will ask him to state in what respect.

MR. REED: Judge, there isn't any such statement here. The statement is that the map indicates that fact.

MR. DICKINSON: Then it is pictorially stated on the map, is it not? The objection is in now, Mr. Crawford; please answer.

THE WITNESS: The map, as I understand it, would simply state which points Birmingham could ship to at lower rates than Pittsburgh could ship to on a portion of a line drawn east and west. In the eastern part of the United States——

By MR. DICKINSON:

Q. No, a line drawn from Norfolk across the country to the Pacific Coast.

A. Yes, but it would run east and west.

Q. The line would, yes.

A. The rates from Pittsburgh and Birmingham would determine the position of that line in the eastern part of the United States. Then as you go farther west the rates from Chicago and Birmingham would determine the position of the line.

Q. This says "based upon common freight rates."

A. I do not see that I am wrong even in that. After a while the Pittsburgh rate to points in the West would be higher than the Chicago rate, and the Chicago rate would be the lowest one, and that would determine the position of the line with respect to Birmingham.

Q. Just tell us what portion of the territory south of a line drawn from Norfolk across the country can be reached by Pittsburgh cheaper than it could be reached from the Birmingham district.

A. I would not be able to give you just where that line would terminate as it went west from Norfolk.

Q. And you have no idea at all about that?

A. I should say somewhere along about the northern part of middle Kentucky.

Q. I do not know that I understand you. You mean to say that west of that, Pittsburgh people could get in and you could not, or how is that? I did not get your answer.

A. To the east of that the Pittsburgh rates and Birmingham rates would be equal on points along that line.

Q. That is to say from, take quadrilateral with the northern line running from Norfolk to western Kentucky. Is that what you said, western Kentucky, and then south to the Gulf?

A. North from the middle part of Kentucky.

Q. Then south to the Gulf and east to the Atlantic ocean; in that territory, is that what you mean?

A. This line did not run north. It ran east and west.

Q. Which line?

A. The line you refer to.

Q. I understand that, but what I am asking you now is what part of the territory of the United States that lies south of an east and west line from Norfolk to the Pacific Ocean can the Pittsburgh district get into now on more favorable terms than the Birmingham people, as to freight rates?

A. As to freight rates?

Q. Yes.

A. I think we can get in at all points south.

Q. South of that line?

A. Yes.

Q. There is a rather large mileage south of that line that you are nearer to and could supply rails, all other things being equal, assuming the cost was equal, cheaper than the Pittsburgh district could, could you not?

MR. REED: You are talking about rails are you not?

MR. DICKINSON: Yes.

THE WITNESS: Yes, that is true.

By MR. DICKINSON:

Q. Now, coming back to these rails, you spoke of a contract in 1906 made with the Harriman people, about half of it you say was accepted and the other half was cancelled. They were made on the old rail mills, were they not, of the Tennessee Coal, Iron & Railroad Company?

A. That is true.

Q. What order of 1907 of the Harriman Lines, what proportion of that order was made upon the old mills and what upon the new mills?

A. Well, the old rail mill was shut down in the latter part of March.

Q. What year?

A. 1908, and the new rail mill was started up I think in May or June.

Q. 1908?

A. Yes, but some of the old open-hearth furnaces were running until about the middle of the year, so a portion of that order may or may not have been in the new open-hearth furnaces, a portion in the old open-hearth furnaces, and a portion may have been made in the old rail mill and a portion on the new rail mill; I am unable to tell you.

Q. They were building the new mills because the old ones had become practically obsolete and too expensive, were they not?

A. They were building the open-hearth for that purpose, and I assume that they thought that the rail mill was also in the same condition.

Q. Well, you completed and operated the rail mills that were in process of construction when you took it over?

A. Yes, but after considerable discussion as to whether we would put it in or whether we would continue to operate the old one after repairing it, we finally decided to replace the old one with the new machinery.

MR. REED: Let us understand what you mean by "rail mill." You mean the rolls and housing, or do you mean the whole works in which the rails were built?

THE WITNESS: I mean particularly the three high roll train with the tables and the first roughing train and engines and tables.

MR. REED: That is that part of the machinery which takes it from the blooms to the finished rails?

THE WITNESS: Yes, that was the part to install which we had to shut down the mill.

By MR. DICKINSON:

Q. Mr. Crawford, after you got that in operation and after a sufficient time had elapsed to bring it to an economical basis, didn't you reduce the cost of rails very much over what they were at the time you operated the latter part of 1907, the old rails upon which they had been filling this Harriman order?

A. We began to reduce the cost almost immediately from the time we went there, and that has continued.

Q. After you got these new mills in operation and good working order didn't you reduce the cost of manufacturing rails to below $20 a ton?

A. That is true.

Q. You have been making from that time on large tonnages, have you not, of rails at the Birmingham mills?

A. Well, they were not large in comparison with the tonnage of some of the northern mills.

Q. Well, take the year 1908; didn't you produce over 250,000 tons?

A. I think that is true.

Q. And in 1909 didn't you produce about 215,000 tons?

A. That is true.

Q. And in 1910 didn't you produce 325,000 tons?

A. That is probably true.

Q. In the year 1910 what was the entire tonnage of rails produced by the United States Steel Corporation including what the Tennessee Coal, Iron & Railroad Company produced?

A. I do not believe I could give you that figure.

Q. The rails that we have referred to here in 1908, 1909 and 1910, are they what you call open hearth standard rails?

A. Yes, sir.

Q. Now, in 1907 do you know how many rails were produced on the old mills, the entire year. I will ask you if it was not approximately 149,000 tons?

A. I should say that was about right.

Q. Before you took over the operations in 1907 the Tennessee Coal, Iron & Railroad Company produced 115,907 tons, did it not?

A. You mean in the months——

Q. No, from January to October, inclusive?

A. I would not be able to say whether that was correct or not.

Q. After you took it in November and December you produced 33,461 tons?

A. I do not recall those amounts, but I have no doubt they are correct.

Q. Take your full capacity of the rail mills you had in 1908; what were they in tons?

A. That is a rather hard question to answer.

Q. I will say operated under conditions capable of constant fulfillment?

A. There was a continual change there during that year; some parts of the mill would not be able to take care of what other parts could deliver to them, and it was a year that we were constantly strengthening the weak parts of the mill.

Q. Take 1909, then, what was your full capacity?

MR. REED: In what products?

MR. DICKINSON: Steel rails, standard?

THE WITNESS: I think the limit to our capacity there would have been the finishing end of the mill; I should estimate it to be between 350,000 and 375,000 tons.

(Whereupon a recess was taken until 2 o'clock p. m.)

AFTER RECESS.

GEORGE GORDON CRAWFORD,

the witness under examination at the taking of recess, resumed the stand.

CROSS EXAMINATION (Continued),

By Mr. Dickinson:

Q. Mr. Crawford, what open-hearth steel works of the Tennessee Coal & Iron Company, if any, were under construction or contracted for or appropriations made for at the time the United States Steel Corporation acquired the Tennessee Coal & Iron?

A. There were four furnaces that were completed, or to be completed. There were two furnaces that were ordered and under construction; they were working on the foundations.

Q. What were the capacities of them?

A. Well, four of them——

Q. Just wait a moment: I will ask you another question: Give the capacity—that makes six, doesn't it, that you mentioned?

A. Yes, six.

Q. Were there not eight of them altogether?

A. Two of them were not contemplated by the Topping administration, and were built long subsequent.

Q. At the time you acquired it were there not eight open-hearth furnaces?

A. Oh, there were more than that, at least some of them were alleged open-hearth furnaces: they were the old furnaces that had been operated up to that time.

Q. What was their capacity?

A. There were eleven tilting furnaces, I think, and one stationary furnace; they had a rated capacity, I think, of about 50 tons to the furnace.

Q. You mean 50 tons per day?

A. Per heat.

Q. What was the annual capacity?

A. They were such a bad type and so poorly constructed and in such a bad state of repair that they were not capable of making their rated capacity. I really am at a loss to know what they could have made.

Q. You are speaking of those already constructed?

A. I am speaking of the twelve other furnaces.

Q. That were already constructed?

A. That were built previous to the Topping administration.

Q. And you say you cannot give that?

A. No, sir, I cannot give that.

Q. You spoke there of some old ones; there were four about completed?

A. There were four new ones.

Q. What was their capacity annually?

A. They were rated at 60 and 65 ton furnaces, and I think I explained in my previous testimony that we increased their capacities by getting some larger ladles and strengthening and adding to the ladle crane and running them on larger heats than had been intended.

Q. What would you state their annual capacity?

A. Their annual capacity has varied as we have varied the auxiliary parts of the plant serving them. As they were when we took them the four furnaces were probably capable of making about five or six thousand tons a month each.

Q. You spoke of them as you got them, did you?

A. Yes.

Q. Now, after you made the changes and improvements what was the monthly capacity you have given to them?

A. Every year since we have continued making improvements and their capacities have changed every year since.

Q. Increased?

A. Increased.

Q. Could you give what it was?

A. That depends so much on the organization and other matters that it is awfully hard.

Q. You have a rated capacity, though, haven't you?

A. Yes, but it does not mean much.

Q. Give us what it was rated at, then.

MR. REED: When do you mean, in 1907?

MR. DICKINSON: I am speaking now of these four furnaces after he took charge, the new furnaces that were completed.

By MR. DICKINSON:

Q. I understood you to say they were about 60 tons—you have given the monthly capacity of them operated without these beneficial changes that you introduced. I ask you the capacity monthly, with these beneficial changes that you introduced.

A. I am trying to explain that if you take an open-hearth furnace, one furnace, and run it you can make a large tonnage with it, but if you run four or six furnaces, the skill with which you can succeed in avoiding getting them bunched determines how much you can get out as an average of those furnaces, and the capacity of all four furnaces grouped is an entirely different thing with one set of conditions and another.

Q. Under economic operating conditions, what did you rate the capacity of these four furnaces per annum?

A. About 5,000 tons per month per furnace each.

Q. Now, then, there were furnaces that were contracted for, completed afterwards, were there not?

A. Two.

Q. What was their capacity? Give their capacity in the same way.

A. I should say about 5,500 each.

Q. What was the total capacity of all the blooming mills of the Tennessee Coal & Iron built or in process of building or contracted for or for which appropriations had been made at the time of its acquisition by the United States Steel Corporation?

A. The blooming mills, with the additions that were made shortly thereafter, soaking pits, traveling cranes, and so forth——

Q. I am only speaking of those in contemplation; that is to say, either those contracted for or appropriated for.

A. We did not think it was able to handle the steel from those furnaces or we would not have made the additions to them.

Q. But you made some additions that they had not contemplated, did you not?

A. That is true.

Q. Could you give me the capacity before you made those additions and then afterwards? Give it both ways?

A. Well, I should say that they could have rolled probably 25 or 30 thousand tons a month.

Q. Before you made the additions?

A. Yes.

Q. And then afterwards?

A. Well, we made additions from time to time. I should say that at the present time we could roll——

Q. Take 1911?

A. I should say we could roll 50,000 or 55,000 tons in 1911.

Q. A month?

A. Yes.

Q. Do you know a company known as the Seminole Land Company?

A. Yes.

Q. Is that a subsidiary of the Tennessee Coal, Iron & Railroad Company?

A. It is.

Q. When was that company organized?

A. I really do not know, Judge Dickinson, when it was organized.

Q. About, as near as you can state?

A. I have no objection—would you let me look that up and refresh my memory? I would like to tell you but I cannot without refreshing my memory.

Q. I am going to ask you to state what iron ore properties they acquired, when they acquired them and where they were located.

MR. LINDABURY: Won't you let him look those up?

MR. DICKINSON: I would rather he would, if he has not the figures.

THE WITNESS: I cannot give you the dates, but we had had put down diamond drill holes to determine where the faults were located, in advance of our operations, and some of those diamond drill holes indicated that there was an extension of

the Red Mountain ore field across Shade's Valley and under Shade's Mountain and when, as the result of those operations, I had an idea that there was ore there, I purchased about $180,000 worth of ore land.

By Mr. Dickinson:

Q. At what time was that?

A. I would not like to say; I will refresh my memory on that and give it to you. The purchases continued over quite a period of time. We simply picked up land when we thought we could get it very cheaply.

Q. And that was the aggregate of all the purchases?

A. I think that was the aggregate. I think the appropriation was about $200,000 for land, and we never spent all of it.

Q. Mr. Leedy is president of it?

A. Yes.

Q. He is in Birmingham?

A. Yes.

Q. Did you buy the property outright, or did you take it in the form of options, or both?

A. We bought it outright, so far as I know.

Q. The stock of the company is owned by the Tennessee Coal, Iron & Railroad Company?

A. That is true.

Q. All of it?

A. All of it.

Q. Now, then, will you give me a statement showing the locations of these several pieces and when you purchased them.

Mr. Reed: Judge, is this cross-examination?

Mr. Dickinson: Do you object to it?

Mr. Reed: I will if you persist, yes. This does not relate to anything brought out on direct examination.

Mr. Dickinson: It relates to these properties there.

Mr. Reed: I make the objection.

(The pending question was repeated by the stenographer.)

Mr. Reed: He cannot do that by to-morrow.

The Witness: I haven't that information; I would have to get it from Mr. Leedy.

By Mr. Dickinson:

Q. It is in your control?

A. I can get it from Mr. Leedy.

Q. And you will do it and put it in?

A. Yes.

Q. What was the total ingot capacity of the Tennessee Coal, Iron & Railroad Company at the time it was acquired? Take the capacity of the furnaces that were completed and those in process of construction.

A. I think the best figure for that would be what we were actually producing. We were producing as much as we could make with the equipment that we had.

Q. What was that when you took it over?

A. I should think it was in the neighborhood of 20,000 or 25,000 tons a month, but I can refresh my memory on that.

Q. That was with the completed plant; but there were other plants for that purpose which were in process of construction?

A. The old furnaces were operating, and the new furnaces were operating, and we were making all the steel we could. That did not include the new furnaces that were being built.

Q. I want you to add that, will you, please?

A. But we scrapped the old furnaces as fast as we could get new ones in operation.

Q. After you got the new ones that were under construction or contracted for in operation, what was their capacity?

A. About 5,500 tons a month.

Q. You are including everything there except what you scrapped, are you?

A. There I am including two furnaces at 5,500 tons a month apiece.

Q. How many did you have altogether operating at that time?

A. I consider that we had six.

Q. What was the capacity of those six?

A. Four about 5,000 tons a month each, and two about 5,500 each.

JAMES R. GARFIELD,

a witness called on behalf of the defendants, having been duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Lindabury:

Q. Where do you reside?

A. Cleveland, Ohio.

Q. Were you ever in the government service?

A. I was.

Q. When?

A. First in 1902; I was appointed one of the Civil Service Commissioners.

Q. How long did you serve in that capacity?

A. Until the spring of 1903, when I was appointed Commissioner of Corporations in the Department of Commerce and Labor.

Q. Was that about the time of the creation of that department?

A. It was at the creation of the department; immediately after. The Commissioner of Corporations was the first officer under the Secretary selected.

Q. You organized that bureau, did you not?

A. Yes.

Q. That bureau was under the charge of what Secretary?

A. The Secretary of the Department of Commerce and Labor.

Q. Who was the Secretary of Commerce and Labor at that time?

A. Mr. Cortelyou.

Q. How long did you continue in that office?

A. I was there until the spring of 1907, when I became Secretary of the Interior.

Q. How long did you continue in that office?

A. Until the termination of Mr. Roosevelt's second administration, March 4, 1909.

Q. Was Mr. Cortelyou succeeded by any other Secretary

during your incumbency of the position of Commissioner of Corporations?

A. He was. First he was succeeded by Mr. Metcalf; then Mr. Metcalf was succeeded by Mr. Strauss.

Q. Which Mr. Strauss?

A. Mr. Oscar Strauss.

Q. And those three held the office during the time you were Commissioner of Corporations?

A. Yes.

Q. Did you at any time, while you were Commissioner of Corporations, take up the subject of the investigation of the United States Steel Corporation?

A. I did.

Q. When?

A. I began the investigation of the general steel business in the latter part of 1902 and the beginning of 1903 in a tentative manner. At that time, during the months that we were organizing the bureau, I was making a general study of a number of the leading industries, and the steel industry was one of those selected for general inquiry.

Later, the specific inquiry or investigation of different businesses and different corporations was undertaken. I do not recall the exact date upon which the specific inquiry into the steel business was finally determined upon as an independent and special investigation. My impression is that it was the end of 1903 or the beginning of 1904.

Q. How long did you continue that investigation or study before you approached the Steel Corporation on the subject?

A. I think I first took the matter up with the officials of the Steel Company in 1905, but I have not had an opportunity to examine any records so as to make any statement positively as to that date.

Q. What was the character of your preceding investigations?

A. It was a study and examination of all the published available reports or statements made by or about the Steel Company and its subsidiary companies.

Q. Did that include the papers covering the organization of the Company?

A. It did, so far as they had been made public.

Q. And the reports? Did you have the reports?

A. I did.

Q. The annual and quarterly reports of the Corporation?

A. I did.

Q. Did you have any assistance in this work?

A. Yes; I had the assistance of the officials of the Bureau of Corporations, and I finally selected Mr. William H. Baldwin as the agent who was put in charge of the whole steel investigation.

Q. Was he a man who had had experience in the steel business?

A. He had had. He was a business man whom I had known in Ohio, and who had had practical business experience both as a banker and as an officer in one of the steel companies, the name of which I have now forgotten.

Q. Whom did you first approach connected with the Steel Corporation on the subject of your investigation?

A. My impression is I first spoke with Mr. MacVeagh, who was the solicitor, I believe, of the Corporation; and through him I met Judge Gary, and thereafter continued my conferences with Judge Gary and some of the other officers of the Corporation from time to time were present at these conferences.

Q. What took place in your interview with Judge Gary?

A. Without attempting to give the exact dates, which I cannot recall, there were various interviews that I had with him in New York. I stated to him at the first interview the purposes of the investigation, the objects that I had in view in the work of the Bureau, and the policy that had been outlined as stated in the report that I had published as to the policy of the bureau. I told him what my view was as to the power of the Government to make the investigation, to make the examinations of the books and records of the Company, and that the purposes of the investigation were to obtain in detail the facts relating to the United States Steel Corporation and its subsidiary corporations, and the other main corporations engaged in the steel business. This investigation was not specifically of the United States Steel Corpora-

tion, but of the steel business as a whole. The inquiries that I made of the Steel Corporation were likewise made of other companies engaged in the steel business.

In the early discussions with Judge Gary he raised questions of the scope of the inquiry, and I told him how far we intended to go, namely that it would be a thorough and complete examination of records of the company, its relations to the railroads, its relations to other companies; in fact, as searching an inquiry as it was possible to make, and he then stated to me the general policy that I had outlined met with his approval; that he believed in publicity, he believed that the government was entitled to the information which I had told him we desired. He stated that he did not intend as representing the Steel Corporation to raise any question regarding the constitutionality of the law under which the bureau was organized and the inquiries made; that it would be his desire to give the bureau all the information that it requested and an opportunity to examine its books and its records, and to verify in any way that I chose the statements that would be made. At one of the early interviews—if I may proceed in this narrative way.

Q. You may proceed, Mr. Garfield.

A. At one of the interviews, I think it was the second one, possibly the first, Mr. Baldwin was present with me and Mr. Filbert, the comptroller of the company, who was called in, and we outlined to him the scope of the inquiry.

Mr. Filbert at that time stated that he thought the inquiry would involve a great deal of time and expense and raised some question regarding the need of the detailed inquiry presented by me. Judge Gary stated to him that those were matters that he need not consider, that the inquiry would be made along those lines, and that he wanted, or directed Mr. Filbert to take up with Mr. Baldwin the inquiry presented and to give the information; that if any questions arose concerning which there was doubt that those matters would be referred by Mr. Filbert to Judge Gary and by Mr. Baldwin to me, and that we would then confer regarding them.

These preliminary interviews I had for the purpose of finding out whether or not the Steel Company would ac-

quiesce in the request that I had made of them, and the result was, as I have stated, that Judge Gary said that he would conform to the desire of the Department and give the information or cause it to be given by the subordinates in his company. At either that second or third interview Judge Gary asked that I arrange if possible an appointment with the Secretary and with the President, stating that he desired to have a thorough understanding with those gentlemen that the Steel Company would conform to the wishes of the Department, and that it was in favor of giving the fullest information to the department; and thereafter I did arrange for a meeting between Judge Gary and Secretary Metcalf, who was then the Secretary of the Department of Commerce and Labor, and the President.

Q. Do you remember when that meeting was held?

A. It was in the fall of 1905, I think.

Q. Did you write a letter to Judge Gary afterwards stating the substance of what was said at that meeting, of what took place at that meeting?

A. I did.

Q. I show you a letter from you to Judge Gary, which is in evidence, and is marked "Defendants' Exhibit 28." It is dated November 4th, 1905. Please look at it and see if you recall it.

A. This paper is the memorandum of the conference which I sent to Judge Gary with a letter.

Q. I show you what purports to be the letter and is marked "Defendants' Exhibit 27."

A. That is a letter which I signed personally, and the memorandum is the memorandum that was contained in the letter sent to Judge Gary.

MR. LINDABURY: Now, if no objection is made I will not ask you to state what took place at that conference but only to answer whether or not it is correctly narrated in this letter and schedule.

MR. DICKINSON: I object to it as irrelevant; I think I did that before.

MR. LINDABURY: Under objection I suppose he could only

use this to refresh his recollection and would have to state what took place. If you do not object upon the ground of verifying it by wholesale I will not go further with it.

MR. DICKINSON: If he says he remembers it, I won't require you to go into detail.

By MR. LINDABURY:

Q. Do you remember it?

A. Yes, sir; very well.

Q. Does that letter state what took place, according to your recollection?

A. It does.

MR. LINDABURY: I spoke of the letter stating it. The statement is in the memorandum, but I meant to speak of the two as one.

By MR. LINDABURY:

Q. Was the investigation undertaken after this conference?

A. It was, and I then presented to Judge Gary the written memorandum outlining in detail the information that we desired.

Q. Look at the paper which I show you and tell me whether or not that is the written memorandum you have just referred to?

A. It is.

Q. It looks as if it must have taken some time to get it up; did it?

A. It was the result of many months of study made by Mr. Baldwin and me prior to the presentation to the company of this request for information, and was based upon the examination of the published documents to which I referred a short time ago.

Q. What did you do with that memorandum?

A. That memorandum I brought to New York and presented to Judge Gary, Mr. Baldwin being with me, and went over with Judge Gary the various items called for. He at that time had Mr. Filbert again present, and we with Mr. Filbert and Mr. Baldwin discussed the various items suggested in this memorandum.

Q. Can you tell whether or not they undertook to furnish the information that that memorandum called for?

A. Immediately thereafter they began to furnish the information.

Q. No, whether they promised to do it or not?

A. They did. Judge Gary specifically stated that he would cause the information to be given, and he then directed Mr. Filbert to proceed and prepare, or cause to be prepared, the information called for by this memorandum.

Q. There was no objection made to any of the things asked for?

A. There was objection made to some; I cannot tell you now what the specific ones were. The nature of the objection was this. Mr. Filbert stated that the information called for was so voluminous and was not in accordance with their method of accounting or keeping of the records, that it would cause a great deal of expense and a great deal of time to conform absolutely to the request contained in this memorandum. He and Mr. Baldwin discussed the various items to which Mr. Filbert called particular attention and Judge Gary directed Mr. Filbert to take those up with Mr. Baldwin and furnish the information, if not in the form requested, then in a form that would be modified by Mr. Baldwin or by me, and then again repeated what he had said at an earlier conference, that if any question arose as to the giving of the information it would be referred to him and to me, and we would then follow out the plan that we had stated to the President, of referring to him or to Secretary Metcalf concerning any point on which we might not agree, but there was no objection made to the giving of any information called for.

Q. So they did furnish you information in answer to all these queries, did they?

A. So far as I know there was at any rate never any objection made to the giving of any of this information, and during the time that I was at the head of the Bureau of Corporations no question arose between Judge Gary and me as to any of the points called for, but all of the information was sent from time to time in accordance with the request of Mr. Baldwin and myself.

Q. Did this voluminous memorandum complete your requisition?

A. No, it did not; from time to time there were additions made to that as the facts were developed from the investigation. I do not recall of any further formal memorandum that I submitted to the Steel Company, but I had conferences from time to time with Mr. Filbert and with Judge Gary. Mr. Baldwin under my direction had similar conferences, and the correspondence of the Bureau would disclose any further requests that were made of the Corporation.

Q. How long did that investigation continue?

A. It had not finished when I left Washington in 1909.

Q. How nearly finished was it then, as you understood it?

A. As I understood it was practically finished at that time unless the years subsequent to the time covered by my inquiries had been added by the new administration, but concerning that I do not know.

Q. Was this investigation thorough?

A. It was as thorough as it was possible for me to make it with the use of the most expert men I was able to employ.

Q. And did the Steel Corporation refuse to furnish any information on any subject which you asked?

A. It did not.

Q. At any time?

A. At no time.

Q. Did they put any obstacles in the way of your examination of their books or papers or records at any time?

A. They did not. May I make one statement about this memorandum?

Q. Yes.

A. There are some marks on here that were not the marks of the bureau. I am referring now to the typewritten memorandum.

Q. Which is the bureau's work?

A. The bureau's work is the typewritten work of this memorandum.

Q. There is in addition to that some pencil memoranda and some red ink memoranda, are there not?

A. There are.

Q. Indicating, I take it, whether the questions have been answered, or something on that subject?

A. Yes; those are not memoranda made by the bureau.

MR. LINDABURY: I offer this in evidence.

MR. DICKINSON: It is excepted to as irrelevant.

(The memorandum referred to was thereupon marked "Defendants' Exhibit (Garfield) No. 98, June 26, 1913," and will be found in the volume of exhibits.)

By MR. LINDABURY:

Q. How long did Mr. Baldwin continue in this service?

A. He was there when I left Washington.

Q. I mean up to that time.

A. Up to that time.

Q. Up to the time you ceased to be Commissioner?

A. Yes.

MR. DICKINSON: You said the time you left Washington. You stayed in Washington long after you ceased to be Commissioner.

THE WITNESS: He was in charge of it up to the time I left Washington.

MR. LINDABURY: I did not care to ask whether he was in charge afterwards or not.

MR. DICKINSON: You are interpreting his language, and doing it, I think, incorrectly.

MR. LINDABURY: If Mr. Baldwin continued after he left Washington, of course he continued after he ceased to be Commissioner of Corporations.

MR. DICKINSON: I supposed you intended to limit it to that. It would bear that construction.

MR. LINDABURY: No, I did not.

By MR. LINDABURY:

Q. How recently before he came into the service of the bureau had he been in the steel business?

A. It had been some years prior to that. I do not recall the exact time.

Q. He was not in the steel business then?

A. No; he had been out of that for some years.

Q. And he was selected, I take it, from what you said, because he had some knowledge of the business?

A. Yes.

Q. Did you report to the President from time to time the progress of your investigation?

A. I did.

Q. Frequently or infrequently?

A. Very frequently.

Q. Did you ever make a report to him of the result of your investigation as compared with the result of your investigation of any other corporation?

A. I did, several times.

Q. Please state that.

MR. DICKINSON: I object to this as irrelevant, and I object to the question because if the reports are in writing they are the best evidence.

By MR. LINDABURY:

Q. Now you may answer.

A. Reports were made from time to time verbally to the President. As I recall it, there were no written reports made of the steel investigation during my time as Commissioner of Corporations. The reports to which I refer were made to the President either upon inquiry from him or on my own initiative regarding the conduct of this and the other investigations during the first three or four years of the work of the bureau, and they were made very frequently and quite in detail as to certain points concerning which the President made inquiry.

MR. DICKINSON: Have you stated whether those were all verbal?

THE WITNESS: They were all verbal, yes.

By MR. LINDABURY:

Q. Now, will you state any report you made to him as the result of the investigation of the United States Steel Corporation as compared with the investigation of the Standard Oil Company?

MR. DICKINSON: This is excepted to as irrelevant.

THE WITNESS: I did make such a report, and the report was to the effect that I had not found in the investigation of the Steel Company any of the conditions regarding rebates or unfair competition that I had found in regard to the Standard Oil Company.

Q. Did you endeavor to ascertain whether or not the Steel Corporation was practising unfair competition?

A. I did.

Q. How?

A. By examination of the reports made by them to the Bureau by an examination of their competitors, asking them whether or not they had any complaint of any kind, and by the general study through the country of statements made by various persons relating to the Steel Company. It was my custom with each company in any investigation such as that of the steel business to make an inquiry of its relations to its competitors, asking them to advise the Bureau whether or not there was unfair competition, or what character of competition existed between the various companies engaged in that particular trade.

Q. Did you find a single competitor of the Steel Corporation who complained of unfair competition upon the part of the Corporation?

A. I did not.

Q. Did you endeavor to ascertain as to the Corporation's treatment of its customers?

A. In the manner that I have indicated I did.

Q. Did you hear any complaint?

A. I do not recall any complaints made by customers. If there were such complaints, they would be on file in the Bureau of Corporations.

Q. You recall none?

A. I do not recall any. There may have been some, but they have left no impression on my mind.

Q. Did you hear of any complaints from the Corporation's employes of unfair treatment?

A. I did not.

Q. Upon what did you base your report that you had learned of no rebating practices?

A. From an examination first of the reports of the Corporation itself; second from an investigation and examination of the railways in a similar manner that I had made inquiry in the Standard Oil or was making in the Standard Oil investigation.

Q. Did you ascertain any rebating practice whatsoever in which the Steel Corporation was involved?

A. None.

Q. None whatever?

A. No.

Q. This investigation so far as it was direct and into the actual doings of the Corporation was begun in the latter part of 1905, I understand?

A. It was, I think.

Q. And it was continued until you went into the Cabinet?

A. It was.

Q. Did you discover the existence of any pools during that time?

A. I did not.

Q. Did you know that pools had previously existed in the steel business?

A. They did.

Q. They were quite common, I suppose?

A. I think they were, yes.

Q. None were discovered by you or your investigators during this period?

A. There were none so discovered.

Q. Do you remember, Mr. Garfield, the panic of 1907?

A. I do.

Q. And do you remember the application of Messrs. Gary and Frick to the President to know whether or not he saw any objection to the Steel Corporation taking over the Tennessee Coal & Iron Company under the circumstances then existing?

A. I know the circumstances.

Q. Did the President make any inquiry of you at that time?

A. He did.

Q. With regard to the Steel Corporation?

A. He did.

Q. What was it?

MR. DICKINSON: That is excepted to as incompetent and irrelevant.

THE WITNESS: At that time I was a member of his cabinet having just left the Bureau of Corporations. He discussed with me the question as raised by the request to which you refer, and asked me whether or not, as having knowledge of the investigation of the Steel Company through the Bureau of Corporations, I knew of any reason why he should not take the action that was finally taken and I told him I did not know of any reason under the circumstances as presented.

By MR. LINDABURY:

Q. Did he or not ask you the specific question as to whether or not anything had been discovered by the Bureau of Corporations on account of which the Steel Corporation should be prosecuted.

MR. DICKINSON: That is excepted to as incompetent and irrelevant.

THE WITNESS: He did not ask me that specific question, but he asked me a question to which that would have been an answer. That would have been a matter for the Department of Justice. He asked me whether or not, in the investigation made by the Bureau of Corporations, the Bureau had discovered any point on which it would make a report to him, the report being of such a character as to necessitate a report to the Department of Justice for its consideration and prosecution.

By MR. LINDABURY:

Q. What did you tell him?

A. I told him that I had no facts, or knew of no facts that would warrant a report of that character.

Q. Was that the fact?

A. That was the fact.

Q. Had your investigation going on for this period of time in the way you have stated, developed any illegal or improper practice whatsoever on the part of the Steel Corporation?

MR. DICKINSON: That is excepted to as involving a question of opinion of mixed law and fact and calling for the judgment of the witness upon a question that the Court has to determine, as to whether or not certain things were illegal, and the facts are not shown upon which the witness is called upon to express an opinion.

(By request the stenographer repeated the pending question.)

THE WITNESS: It had not, to my knowledge.

By MR. LINDABURY:

Q. And had that investigation omitted anything that you could think of touching their practices which might need or call for investigation?

A. I had made it as complete as possible.

Q. Omitting nothing?

A. Omitting nothing concerning which I had any suspicion or omitting nothing which I believed the Government should have in its possession as information, full and complete, regarding this and similar corporations.

Q. And were you blocked or hindered at any point, in any way, in making that investigation, by anybody?

A. I was not.

CROSS EXAMINATION

By MR. DICKINSON:

Q. Mr. Garfield, at the time you made this report to the President in 1907, about the time of the taking over of the Tennessee Coal, Iron & Railroad Company, to what extent had your investigations proceeded, and how far had the work of your various clerks and agents been summed up?

A. I cannot tell you exactly; it had been in progress then something less than two years, after the request for information from the company, and quite a bit over two years on the total work of the bureau, but from time to time as these reports were sent in I personally gave a great deal of attention to them and discussed the facts with Mr. Baldwin, the general agent in charge, so that I kept pretty closely in my own mind the results of the various investigations as they proceeded.

Q. Up to that time was not the bulk of the information which you had derived directly from the United States Steel Corporation itself?

A. No, by no means.

Q. Had you examined any witness under oath?

A. None.

Q. Did you have a right to summon witnesses?

A. I had.

Q. And up to that time none of your conclusions were based upon any sworn testimony?

A. They were not.

Q. Had you examined the minutes of the United States Steel Corporation yourself or had you examined the minutes of any of the subsidiary companies of the United States Steel Corporation?

A. I do not recall whether at that time those minutes had been examined or not.

Q. They are very voluminous, Mr. Garfield.

A. My recollection would be that I had not seen the minutes of the Corporation.

Q. That is your recollection?

A. But I am not sure of that.

Q. Had you taken any testimony of any one outside of the United States Steel Corporation under oath?

A. No, I had not.

Q. Did you not understand that under the authority by which you were investigating that you had a right to summon witnesses?

A. Perfectly so.

Q. That you had a right to cause the production of papers and documents in the possession of the United States Steel Corporation?

A. Yes.

Q. You understood that you had that right entirely independent of any matter of grace upon the part of the United States Steel Corporation?

A. Absolutely so.

Q. You did not regard that they were doing any favor to the Government in offering to give you what you had a right to demand.

A. Certainly not.

Q. You say that you made some investigation about rebates. Did you have before you anybody connected with the traffic managers of the United States Steel Corporation or any statement from them?

A. I do not recall at that time whether any statement had been made from them or not. I had met various railroad managers whom I knew and had been in conference with in other examinations and had asked for the same character of information about the Steel Company that I had obtained for the other corporations.

Q. Well, now, in regard to the railroad companies, were these verbal inquiries made by you?

A. They were verbal inquiries, yes.

Q. And nothing reduced to writing?

A. Nothing, as I recall; that would be a matter of record of the department. I cannot tell.

Q. So far as you know, nothing under the sanction of an oath?

A. I know there were no witnesses called by me.

Q. So whatever they may have told in a matter of that sort would have been merely giving you information up to that time gratuitously would it not?

A. No, not gratuitously.

Q. They were not under summons?

A. No, they were not under summons, but as I said to them in each instance, I had the right to call them as witnesses, and if they would not give me the information I desired willingly I should summon them as witnesses.

Q. Did they produce any books or papers or records respecting matters of rebate?

A. They did, from time to time, produce such records as they had, and either I or the agent in charge would examine those records, the way bills and the shipping transactions, and if matters were discovered in any such investigation that led the agent to believe that there was rebate or suspicion of rebate, then there was a more detailed examination made of long lines of shipments. That was the manner by which I discovered the rebates in the Standard Oil cases.

Q. When you speak of the United States Steel Corporation, was your inquiry in regard to rebates allowed that Corporation as a corporation itself?

A. Either as that or their subsidiaries.

Q. Their subsidiaries?

A. Yes.

Q. Did you make special inquiry regarding the subsidiaries of the various corporations?

A. I suppose so. I did not personally do so, but the directions were that it should not be limited to a single corporation. It was, as I have stated, covering the whole steel investigation and the inquiries of the railroads would not only be as to the United States Steel Corporation, but likewise as to other companies engaged in the steel business, the purpose being to discover whether any of the steel companies were engaged in the practices that I had found with some of the other corporations.

Q. And your inquiries extended to all practices such as rebates and contracts in restraint of trade?

A. I endeavored to cover all those points.

Q. And pools?

A. And pools.

Q. Did you regard pools as unlawful?

A. I certainly did.

Q. Suppose certain parties who were competitors in business formed an association by which they agreed to maintain and did maintain a certain price for any fixed period of time of the product made by them in common, would that have presented itself to you as an unlawful agreement?

A. It would.

Q. You began your inquiries in 1905?

A. Immediately after this memorandum of November, 1905, I think.

Q. Of whom did you make inquiries connected with the United States Steel Corporation as to whether or not any of the subsidiaries of that Corporation had been engaged in pools?

A. That I cannot answer in detail, Judge, because the detailed examination was conducted by Mr. Baldwin and the

agents with him. The only persons of the United States Steel Corporation with whom I had conferences were Judge Gary, Mr. Filbert, the comptroller and Mr. Trimble, who was present at one of the meetings.

Q. The secretary?

A. The secretary.

Q. Along what lines did your inquiries to Judge Gary proceed?

A. Of the character that I have stated to you necessarily of a general nature, and I think I have covered that quite fully in my statement in chief.

Q. Did you ask him as to any unlawful practices in regard to their competitors, or any unfair treatment in regard to their competitors?

A. I stated to him the inquiry would cover all of those points, and that if anything of that character was discovered it of course would be reported upon to the President.

Q. Did he make any statement to you in regard to the existence or non-existence of any unfair treatment towards competitors?

A. He made statements to me I remember twice, at any rate, and I think one time we were with the President, but of that I am not sure, that it was his desire to discover anything of that character that existed in the Corporation, that he did not himself know of any illegal practices that the Corporation was guilty of, and if anything of that character was discovered he desired to know it to the end that it might be put an end to.

Q. You say was guilty of. Do you mean just at that particular moment or had been guilty of?

A. I suppose he meant at that time.

Q. Did he refer to any previous time?

A. I do not recall that we discussed the question of time.

Q. Did your inquiry involve just that moment or did it involve a period from the beginning of the Corporation?

A. From the beginning of the Corporation, 1902.

Q. What did you understand his statement to apply to then?

A. I do not know that I analyzed his statement as to time.

Q. What did you accept it as relating to?

A. I should say that I accepted it as relating to the Corporation as it was then existing and doing business.

Q. Then existing and doing business?

A. Yes, sir.

Q. At what time was that?

A. That was in 1905.

Q. 1905?

A. Yes, sir.

Q. You did not understand him to make any statements in regard to competitors previous to the moment at which you were then talking?

A. I made no inquiry at that time.

Q. You just simply asked him if they were then and there at that time and particular moment engaged in any unlawful practices?

A. No, I say I did not ask Judge Gary that specific question, but I stated to him that if we discovered any practices of that kind they would of course be reported upon to the President, and he then made the statement that I have just stated, that if anything of that kind was going on, if the Corporation was guilty of anything of that kind, that he wanted to know it and would want to know all about it.

Q. Did he say whether or not he did know of any previous practices of the Corporation?

A. He did not say anything, as I recall it, about previous practices.

Q. Did he tell you that the Corporation previous to that time, that is a number of its subsidiaries had been engaged in pools and combinations?

A. He did not.

Q. Never mentioned any such thing as the structural association?

A. He did not.

Q. Nor the plate association?

A. He did not.

Q. Or the rail pool?

A. He did not.

Q. Or the cotton tie pool?

A. He did not.

Q. You never heard of those, Mr. Garfield?

A. Yes, I have heard of them.

Q. I mean you never heard of them as having, at the time you began this investigation, been participated in by any of the subsidiaries of the United States Steel Corporation after its formation?

A. I do not think so.

Q. How about the Armor Plate Pool up to that time; had you heard anything of that?

A. No.

Q. Or the Wire Pools?

MR. LINDABURY: I wish to object to that last question because nobody has heard of it and there is no evidence whatsoever of its existence.

MR. DICKINSON: The existence of what?

MR. LINDABURY: The existence of the Armor Plate Pool. There is no evidence whatever of the existence of an Armor Plate Pool at any time since the Steel Corporation was formed.

MR. COLTON: It is, in 1902, in the Carnegie minutes.

MR. DICKINSON: I asked the witness if he heard of any and he said he had not.

MR. LINDABURY: Do not go outside of the record.

By MR. DICKINSON:

Q. I believe I asked you about wire pools?

A. Yes.

Q. At the time you referred to in 1905, you had received no information that any subsidiary of the United States Steel Corporation since the formation of the Corporation had engaged in any pools?

A. No, I had no information.

Q. Up to the time that you left the office had you acquired any such information?

A. I think not.

Q. Do you know whether your subordinates had?

A. I think not, although I am speaking now without an

opportunity to refresh my memory from any records of the Bureau as to dates.

Q. The records would show that?

A. The records would show that.

Q. If it was in writing it would show?

A. If it was in writing it would show.

Q. Did you, at any time while you were in office, get any information in regard to contracts by which a customer of a subsidiary of the United States Steel Corporation in consideration of taking from the Corporation any fixed percentage of its requirements was getting a reduction in price as against other customers of the company?

MR. LINDABURY: Objected to as irrelevant and immaterial.

THE WITNESS: Nothing.

By MR. DICKINSON:

Q. You had heard nothing of that character?

A. Not during my time in office.

Q. And did you up to the time you left the office learn of any contracts entered into by any of the subsidiaries of the United States Steel Corporation with any of the large consumers of various iron and steel products by which such consumers would take all of their requirements from any subsidiary?

MR. LINDABURY: Objected to as irrelevant and immaterial.

THE WITNESS: I do not recall any such, but the records of the Bureau would be conclusive as to that.

By MR. DICKINSON:

Q. This investigation was quite a large and voluminous matter, was it not?

A. It was.

Q. And it was going on during the whole time you were in office?

A. Yes. That is, not the whole of it.

Q. I mean the whole time you were in office as commissioner.

A. Yes, during the first year.

Q. I mean from the time you began until the time you left?

A. Yes.

Q. No report had been made during that time?

A. No written report.

Q. No printed report?

A. No written or printed report; no.

Q. And no summary?

A. No.

Q. The investigation had not been completed?

A. It had not been completed.

Q. It was still being proceeded with along all the lines of inquiry, was it not?

A. It was; yes.

Q. Do you know anything about any complaints that were on file in the bureau, of the high prices of raw materials, which complaints were made by competitors of any of the subsidiaries of the United States Steel Corporation?

A. I do not know of any. There again the records of the Bureau would disclose any, if they exist.

RE-DIRECT EXAMINATION.

By Mr. Lindabury:

Q. Speaking of the practices of your bureau, was it the practice to call witnesses and examine them under oath in any of these investigations?

A. By no means.

Q. Was the course pursued in that respect in the investigation of the Steel Corporation different from that which generally obtained?

A. Exactly the same. May I finish that?

Q. Yes, you may.

A. Wherever an individual or a corporation acquiesced in the power of the bureau to compel the production of books or testimony or records, it was my policy not to call the representatives of the corporations as witnesses and put them under oath.

We conducted the examinations in this and in the other investigations with the idea that we were seeking informa-

tion which we could verify from books of original record, and when the books of original record were opened for inspection, our investigators went to those books. Statements would be made by representatives of the Corporation. They were not taken as final by any means. If anything upon those records disclosed questions for further investigation the inspector went to the books. If they were then not answered, we went to other information, in whatever form we found it advisable or necessary, the purpose being to obtain the facts in the readiest possible fashion.

In regard to railroads, wherever a railroad would give the opportunity to examine its way bills and its bills of lading without subpoena, we of course pursued that policy, and after the Standard Oil investigation the railroads did so open their books to our inspection.

Q. When books were voluntarily produced and open to you did you discover any occasion for subpoenaing them?

A. We did not.

Q. And it was their books and records you were examining, rather than the memory of witnesses, I suppose?

A. Entirely so.

Q. Now, were the books of the Steel Corporation open to you?

A. They were.

Q. Did you have access to all of them that you desired to examine?

A. We did.

Q. And did your men examine them?

A. They did, in so far as it was necessary.

Q. Now, with regard to these conversations with Judge Gary, or statements as to the attitude of the Steel Corporation, did he say anything with respect to the desire of the Corporation to conform to the law?

A. He did.

Q. What did he say?

MR. DICKINSON: We except to that as irrelevant and incompetent.

THE WITNESS: He stated that it was his desire, and the desire of the Corporation, to comply with the law.

By Mr. Lindabury:

Q. Did he or not ask to be informed of any practices that you discovered which were open to criticism or which the department thought ought to be changed?

A. He did.

Q. What was it?

A. He asked that he be advised of anything of the sort, stating that it would be his desire to correct any if they were found to exist.

Q. Did he or not express a purpose to conform to the views of the department or the government with regard to the management of the business?

A. He did.

Q. Was that an isolated expression or was it made more than once?

A. I think I have covered that in my examination in chief, that it was from the first interview I had with Judge Gary, it was his statement to me that he believed in the work of the Bureau of Corporations, he believed in the publicity that we were striving to obtain, and it was his desire to conform to the policy of the government as outlined to him by me and under the wording of the law.

WILLIAM J. FILBERT,

a witness previously sworn on behalf of the defendants, was recalled for further examination.

Mr. Lindabury: It is understood between counsel that inasmuch as Mr. Reed has been called away, upon his return he may enter any exceptions to questions asked during the further examination of Mr. Filbert that he desires to make, and that he may re-examine him on the subject of this cross examination later if he wishes to do so, or on any other subject that he would have a right to re-examine him on now if he were here.

CROSS EXAMINATION (Continued)

By Mr. Colton:

Q. Mr. Filbert, you were asked to produce whatever original papers you had that showed upon what the estimates stated in Defendants' Exhibit 76 were based?

A. Yes, sir.

Q. For the year 1899?

A. Yes, sir.

Q. And you have produced for the year 1899 what paper? How is it entitled?

A. It is a document consisting of two sheets, the first sheet entitled:

"Welded tubular goods, National Tube Company and affiliated companies, estimated capacity of finished welded goods."

And the second sheet is entitled:

"Welded tubular goods, independent manufacturers. The number of furnaces shown for each year includes only finished furnaces, those in course of construction being excluded."

Does that document that you produce show by whom it was made?

A. No, it does not show by whom it was made.

Q. Does it show when it was made?

A. No, it does not give the date or time it was made.

Q. You do not know when it was made, do you?

A. Yes, I know when it was made.

Q. When was it made?

A. It was made in the latter part of 1911.

Q. By whom was it made?

A. It was made by the officials of the National Tube Company.

Q. And concerning capacities for the year 1899, made up in the year 1911?

A. The statement which is before us was made at the time I have indicated, but it is not my understanding that it was in turn made from data in their possession which was compiled at that time, but data which they had on hand.

Q. You do not know from what data that is compiled?

A. I could not testify absolutely, no.

Q. And you do not know just how the data from which that is compiled came into the possession of the officials of the National Tube Company?

A. Not specifically. Generally I know.

Q. Do you know that any of the data with respect to independents there set forth came into their hands in the year 1899?

A. I could not say when it came into their hands originally.

Q. Is the same thing true of the year 1901 that is true of the year 1899, Mr. Filbert? You may look at this.

A. Just what do you mean, Mr. Colton?

Q. I mean have you any more information concerning the year 1901 than you had concerning the year 1899?

A. The information which I have concerning the year 1901 came into my hands earlier; in the latter part of 1910 or the early days of 1911.

Mr. Colton: Then, as it is somewhat different from the information in respect to 1899, in the documents produced as called for, I renew the objection to Defendants' Exhibit No. 76 on all the grounds previously stated, and upon the further ground that it now appears that the document produced by Mr. Filbert as in his possession, and from which the estimated capacities for 1899 were made up, is hearsay, and the source from which they came not fully disclosed, nor is the time when they were compiled disclosed; and on the further ground that the witness is not shown to be competent to testify either in regard to Exhibit 76 or the paper from which Exhibit No. 76 was made up; and the further objection is made that this is secondary evidence.

By Mr. Colton:

Q. Now, as to the year 1901: What have you got in support of the year 1901, what paper?

A. I think I stated that.

Q. State that again if you will.

A. This is the statement.

Q. Will you state how it is entitled for the year 1901, the statement which you produce in support?

A. This is the statement; it consists of quite a number of sheets.

Q. So far as the year 1901 is concerned first.

A. This statement is entitled: "Welded and Seamless Tubular Goods, National Tube Company and affiliated companies production and estimated capacity; independent manufacturers, estimated capacity, years 1901 to 1910 inclusive."

Q. In Defendants' Exhibit 76 you produce certain capacities for the year 1901?

A. Yes.

Q. And those were taken from the document, the title of which you have just read?

A. They were.

Q. Will you turn to the year 1901 as given in that?

A. Yes, sir.

Q. So far as independents are concerned for the year 1901, when were the capacities for independents made up?

A. This statement was made up and furnished me on request to the National Tube Company in either the last month of 1910 or the first month of 1911, and my understanding is that the statement itself was compiled and written at the time from data in the files and archives of the National Tube Company.

Q. You do not know, then, whatever data there may be in the files of the National Tube Company—you do not know when they got that data together for the year 1901, do you?

A. I do not.

Q. You do not know anything about the original data at all, do you?

A. Not specifically.

Q. And that statement you have there for 1901 is itself a summary, isn't it?

A. Well, it is a summary, but a rather detailed summary, I should say.

Q. It gives furnaces?

A. It gives the number of furnaces, the character of the pipe made, and in the case of the independents, the estimated capacity, the name of the independents and the location of the independents.

Q. It gives all that, and then from that you have made a summary?

A. Yes.

Q But it does not show any of the sources nor by whom made?

A. It does not.

Q. Nor when made?

A. It does not.

Mr. Colton: I renew all objections previously made to Defendants' Exhibit 76 in so far as it relates to the year 1901, and object on the further ground that the supporting data from which the witness now testifies that he made up the capacities in 1901 are themselves secondary and as hearsay so far as he is concerned.

By Mr. Colton:

Q. So far as Exhibit 71 related to seamless tubes, Mr. Filbert, you got that for the year 1901 from this same memorandum, the title of which you have read?

A. I did.

Q. That shows for the year 1901 the name of the plants, does it?

A. It does.

Q. And the location?

A. Yes.

Q. And so far as the National Tube Company is concerned, the amount of the production?

A. Well, only two of those plants in 1901 were plants of the National Tube Company.

Q. Which are those two?

A. That is, the works designated as Standard Works A, and the other is the Christy Park works.

Q. What does the document show for the year 1901 in respect to the production of those?

A. It shows the production of both the works at Ellwood City, Pennsylvania, designated as Standard Works A and B, was 4,469 gross tons.

Q. And what does it give as the estimated capacity for those two works?

A. 6,200 tons.

Q. And the Christy Park works of McKeesport?

A. Production 2,000 tons; estimated capacity, 5,000.

Q. What are those other companies that are given under the head of "National Tube Company and affiliated companies," what are the other plants?

A. The other plants, namely, Albany, Auburn, Greenville, Hartford, Shelby and Toledo works, were plants of the Shelby Steel Tube Company, as was also one of the works designated as Standard A and B at Ellwood City.

Q. Do you know anything about where those productions came from?

A. Well, with respect to the production figures—pardon me, the production figures?

Q. Yes.

A. Yes, those were taken from the records of respectively the National Tube Company and the Shelby Steel Tube Company.

Q. You may give the production for the other plants there named.

A. For each plant?

Q. Yes, for the year 1901.

A. Albany works, 720 tons; Auburn, 720 tons; Greenville, 2,635 tons; Hartford works, 675 tons; Shelby works, 7,446 tons, and Toledo, 2,100 tons.

Q. And the total is how much, if it is given? I do not want anything that is not given.

A. The total production of all plants, including the two plants owned by the National Tube Company and the seven plants owned by the Shelby Tube Company was 20,765 tons.

Q. And does that paper show anything as to the production of independents?

A. No, sir.

Q. It shows the estimated capacity of independents?

A. It does.

Q. Do you know anything about the accuracy of what it shows in respect to the estimated capacity of independents?

A. I believe it to be a fair figure for their productive capacity.

Q. What does it show the estimated capacity of the independents to be?

A. 7,000 tons.

Q. What do you base that on, Mr. Filbert, your belief that that is the capacity—do you base it on your faith in the people who prepared the memorandum?

A. Very largely, yes, sir.

Q. Not of personal knowledge?

A. Not on personal knowledge in respect to the capacity of the independents.

Q. In respect to your own capacity, do you have personal knowledge?

A. I have records which give that information.

Q. Records that have come to you in the ordinary course of business?

A. In the ordinary course of business.

Q. Does your knowledge of production extend beyond this memorandum; I mean, have you other sources of information as to the correctness of production set forth, so far as the National Tube Company's seamless tube production is concerned?

A. We have, both as to the production of the National Tube and the Shelby Steel Company.

Q. So far as the independents are concerned, your information is based upon this summary for all the different years for which you gave it in Defendants' Exhibit No. 71?

A. Very largely so.

Q. And so far as the independents are concerned, you do not know the exact time at which these capacities were estimated?

A. I do not know the exact time when the National and Shelby Tube people estimated the capacity of the independents for the respective years.

Q. You do not know from what data it is estimated?

A. Well, generally I know from what data; yes, sir.

Q. Now, just what data did they have in the year 1901 from which to estimate independents' capacity?

A. They had in their employ in an official capacity a gentleman who knew all about the seamless tube business in the United States, and he knew what competitors there were

in this country and as any man knows who is actively engaged in the business, he knew what plants they had and how extensive they were, and from his knowledge of the business he could tell with a great degree of accuracy what the capacity of their plants was.

There is no secret among steel makers as to size of the plants which they respectively have.

Q. Who was that man?

A. That was Mr. Nicholson.

Q. A National Tube man?

A. He is a Shelby Tube man.

Q. And you base your belief in the accuracy of these statements on your faith in Mr. Nicholson?

A. I do.

Q. Do you know whether Mr. Nicholson prepared that for the year 1901?

A. I cannot positively testify, but it would seem very, very strange to me if the opinion and views of the highest trained expert in the country would not be requested upon any statement of that kind.

Q. Do you know whether these estimates for 1901 were prepared in the early part of the year, or the latter part of the year 1901?

A. I have before testified that I do not know exactly at what date they were prepared.

Q. If they were prepared in the early part of the year they could not have been prepared by that expert.

A. In the early part of 1901?

Q. Yes.

A. I think so.

Q. The Shelby was not taken over until August.

A. Well, I ought to explain that, I think. I think I am perhaps a little in error. Mr. Nicholson was in the early part of 1901 with the National Tube Company, he having, in conjunction with another gentleman whose name I do not precisely recall, constructed the Standard Seamless plant at Ellwood City, which, prior to April 1st, 1901, was purchased and owned by the National Tube Company. Mr. Nicholson was not at April 1st, 1901, in the employ of the Shelby Tube Company.

Q. In whose employ was he on April 1st, 1901?

A. The National Tube Company or the Standard Seamless Tube Company, but he had formerly been with the Shelby Tube Company.

Q. What does the document that you here produce in response to what you base your seamless tube capacity on show as to the extent of the capacity of seamless tubes for the year 1901 for the United States Steel Corporation and for independents?

A. The percentage?

Q. Yes.

A. 82.8 per cent.

Q. For the Corporation?

A. Yes.

Q. What does it show for the independents?

A. 17.2.

Q. Mr. Filbert, will you state what that memorandum is? I think it would be more convenient if you would just read it into the record and state what it is.

A. It is a memorandum which shows the production of T-rails by the Tennessee Coal & Iron for the years 1908, 1909 and 1910; also the tonnage of T-rails shipped to customers by that company in the same years, and also the production of T-rails by the Tennessee Coal & Iron Company between January 1st and October 31st 1907, and a similar production for the months of November and December, 1907.

Q. You have produced this at the request of the Government?

A. I have.

Q. Where did you get that?

A. From the original returns of the Tennessee Coal & Iron.

Q. Will you read it into the record?

A. "T-rails produced and shipped by the Tennessee Coal & Iron Company."

Year.	Produced.	Shipped.
1908	251,440	245,673
1909	215,161	204,753
1910	325,686	320,315

During 1907 the T-rail production of the Tennessee Coal & Iron Company was as follows:

January 1st to October 31st	115,907
November and December, 1907	33,461
Total	149,368

All the foregoing figures are gross tons.

Q. You were asked to produce a memorandum showing the estimated capacity of the Union Steel Company. The date was not precisely stated, but you took it to be the same date as given by Swank's report, with reference to which you were then being examined for 1904, was it not?

A. That is correct.

Q. Now, what was the capacity completed of the Union Steel Company on February 1st, 1905, in respect to blooms, billets and slabs at the Donora plant?

A. It was 425,000 gross tons per annum, but, of course, this was in February, 1905. At the time the Steel Corporation acquired the property it had no capacity, none.

Q. What was under construction with reference to a blooming mill at that plant at the time the Steel Corporation acquired the plant?

A. They had just inaugurated the construction of a blooming and billet mill.

Q. Do you know what was the estimated capacity of the blooming mill which they had inaugurated that you speak of?

A. I have just stated that at February 1st, 1905, when that mill was completed, the capacity was 425,000 gross tons.

Q. What I am getting at is, this completed mill is a completion of something that was inaugurated at the time you acquired the Donora plant; is that correct?

A. Yes.

Q. What was the rod mill capacity at the time that contract was made, December, 1902?

A. 200,000 gross tons per year.

Q. What was the capacity in 1904?

A. The same.

Q. I neglected to ask you what the capacity of the completed portion of the blooming mill in 1904 was.

A. August 1st, 1904, it was 210,000 gross tons.

Q. Do you know when the blooming mills were first completed?

A. They were ready for operation about the middle of 1904, but they did not operate, as I recall it, until some time later, because they did not have the steel there.

Q. About February, 1905?

A. About February, 1905, I think.

Q. What was the drawn wire estimated capacity in September, 1902?

A. 172,000 gross tons.

Q. August 1st, 1904?

A. 165,000 gross tons.

Q. What was the estimated capacity in December, 1902, in nails?

A. 1,600,000 kegs.

Q. And August 1st, 1904?

A. The same.

Q. What blooming mills were there at South Sharon?

A. There was a 36-inch blooming mill.

Q. Was that the only one?

A. That is the only blooming mill.

Q. What was the capacity of that blooming mill in December, 1902?

A. 250,000 gross tons.

Q. What was its capacity August 1st, 1904?

A. The same.

Q. What was the capacity of the tin bar mill, December, 1902?

A. 97,000 gross tons.

Q. And August 1st, 1904?

A. 70,000 as it was then being operated.

Q. Your continuous billet mill, what does that expression mean?

A. There is a continuous billet mill that is run in conjunction with two rod mills, and the output of the billet mill

runs hot into the rod mill, so the production of the combination mills is in rods.

Q. If the product had been made into billets instead of being carried on into rods it would have increased the billet production of the South Sharon plant by a little over 105,000 tons, would it not?

A. No, sir; it would not.

Q. What would it have done?

A. It would have left the production just as I have it stated.

Q. What would it be?

A. It was 105,000 gross tons in December, 1902. Do you want 1904?

Q. No, what I am getting at is this; suppose those rods were kept in the form of billets, what would the total billet manufacture be?

A. You are presupposing a condition that could not exist.

Q. You mean that you could not in a continuous billet mill make billets?

A. You would not do it, because the mills are not hooked up to do it that way. You could not do it without remodeling your mills.

Q. It is an advantage to have a continuous billet mill in the manufacture of wire rods, is it not?

A. Yes, and those continuous billet mills are there exclusively for the purpose of running hot billets into the rod mills. You would not make billets on those mills except that you run them through the rod mill.

Q. But you do not use any of the billets manufactured on the 30-inch blooming mill above referred to in the manufacture of the billets and rods on the continuous billet mill, do you?

A. No, but you might if you wanted to.

Q. Would you not have to increase your rod capacity?

A. If your continuous billet section of the mill was shut down, broken down, or something of that kind, you could run the billets around, but not economically.

Q. Not as economically?

A. Not as economically.

Q. What is the plate mill capacity—did I ask you—for 1904?

A. I do not think you did.

Q. Give the capacity of the continuous billet mill August 1, 1904.

A. At that date the capacity of the combination continuous billet mill and the rod mills was 110,000 gross tons.

Q. Give the estimated capacity of the plate mill December, 1902.

A. 75,000 tons.

Q. August 1, 1904?

A. 120,000 tons.

Q. Drawn wire, estimated capacity, December, 1902?

A. 86,000 gross tons.

Q. August 1, 1904?

A. 86,000 gross tons.

Q. Nails, in kegs, December, 1902?

A. 900,000 kegs.

Q. August 1, 1904?

A. The same.

Q. Tin plate mill, 20 hot mills. What is the capacity given in?

A. In gross tons.

Q. What was its capacity in gross tons?

A. We have no record of the capacity of that mill at December, 1902. I can give you what its production was during the calendar year 1903, which probably was up to 85 per cent. or so of its capacity.

Q. What was its production?

A. Its production in 1903 was 34,600 gross tons.

Q. And August 1, 1904, its capacity was what?

A. 43,400 gross tons.

Q. No very great change in its size took place, then, between 1902 and 1904?

A. No; but it was getting into better operating condition, and the practice was improving.

Q. But it was essentially the same mill?

A. Substantially the same mill.

Q. Tin plate, boxes. How many tin plate boxes; what was its capacity in tin plate boxes December, 1902?

A. 659,000 boxes of tin plate.

Q. And its capacity August 1, 1904?

A. 726,000 boxes.

Q. The sheet mill was not complete December, 1902, was it?

A. It was not.

Q. Nor on August 1, 1904?

A. No, it was not.

Q. It was completed in July, 1905?

A. Yes, sir.

Q. And it then had a production of 38,400?

A. It did.

Q. Was the originally planned sheet mill a 10 hot mill sheet mill?

A. It was.

Q. And that was the capacity that was finally completed—a mill of the same capacity that was finally completed?

A. Yes; that is correct as to the number of mills, but the type of the mill was changed from what was originally designed for that plant.

Q. Did the change in type make a change in the estimated capacity?

A. I think it increased it somewhat.

Q. You do not know by just how much?

A. No, I do not.

Q. Just read the statement you have in reference to Donora galvanized, field fence, and barbed, wire, with whatever explanations are necessary.

A. At Donora, at December 1, 1902, they had no capacity for field fence at all.

In 1904 machines had been installed and they had a capacity of 21,000 gross tons of field fence.

In barbed wire the capacity at December, 1902, was 55,000 gross tons; and in August, 1904, the same.

At South Sharon the barbed wire capacity December, 1902, was 24,500 tons, and in August, 1904, 27,000 gross tons.

Q. Do you know whether the machinery or whatever is

necessary to manufacture field fence had been ordered or contracted for in December, 1902?

A. For which plant?

Q. For the Donora plant.

A. Yes; but the machinery that had been contracted for by the old management was an utter failure and could not be operated successfully, and it was not used.

Q. You got new machinery in place of that which had been ordered?

A. Yes.

Q. They could galvanize the wire instead of making it into barbed wire, could they not?

A. But—pardon me—you could make barbed wire from galvanized wire or plain wire or painted wire.

Q. That is, you may carry tonnage into barbed wire or into galvanized wire?

A. Generally speaking, Mr. Colton, that is correct, but you may galvanize all wire——

Q. What do you do with wire when you galvanize it?

A. You may sell it as galvanized wire for clothes lines, or anything of that kind.

Q. What do you have to do with wire in order to galvanize it?

A. Run it through a galvanizing pan, through the spelter.

Q. And they had some galvanizing pans at Donora?

A. Yes, sir; they had four at Donora in 1902.

Q. How much wire would you be able to galvanize on four galvanizing pans?

A. I would say about from 50,000 to 60,000 tons.

Q. Mr. Filbert, do you know what the ingot capacity of the Union Steel Company was at Donora for those twelve open-hearth furnaces that they had there?

A. I testified to that in my previous examination, but I would say it was about—I could refer to the figures in my office, if you want them, in a minute.

Q. I would like to get that.

A. It is in the record.

Q. The total ingot capacity, I think, we have not gotten for the whole twenty-four furnaces.

A. I should say 900,000 tons. I think it is slightly above that.

Q. Could you get the exact figures?

A. I could. I will send for them now.

Q. Were there any open-hearth furnaces under construction other than the twenty-four open-hearth furnaces at the Donora and South Sharon plants at the time the Steel Corporation acquired the Union Steel Company?

A. You mean within the Steel Corporation?

Q. Or under construction by the Union Steel Company or contracted for by the Union Steel Company at the time of its acquisition, whether there were more than twenty-four open-hearth furnaces, so far as you know?

A. Well, there were twelve at Donora, the construction of which had just been inaugurated; there were twelve at South Sharon, of which ten had been completed, and two were being completed. That is all.

Q. That is all?

A. Yes.

Q. Mr. Filbert, I show you Government Exhibits Nos. 433 and 435. The only information that you could get in reference to the Carnegie Steel Company for 1900 was in regard to billets, blooms, slabs and sheet bars and steel rails?

A. That is the only information which I was able to obtain.

Q. And the heading of Government Exhibit No. 435 was prepared by you?

A. It was.

Q. And it is correct?

A. It is correct.

Q. As regards Government Exhibit 433, you have shown the exports by the United States Steel Corporation by companies?

A. Yes, sir.

Q. For the year 1901?

A. Yes.

Q. And for the year 1902?

A. Yes, sir.

Q. I notice on that it says National Steel Company six months, 1901, only. What does that mean?

A. It means this: The exports for the National Steel Company for the first six months are shown in the statement in an item by itself. The exports of the National Steel Company for the second six months of 1901 are grouped and included with the exports of the Carnegie Steel Company for the whole year, and the American Steel Hoop Company for the second six months.

Q. And the total for 1901, 460,316, is the total of all the exports of the various subsidiaries of the United States Steel Corporation so far as they were available?

A. Yes.

Q. And the total for 1902 is the same?

A. Yes, only that is complete as to all shipments.

Q. That is it is more complete in respect to the production and tonnage than 1901?

A. It is more complete.

Q. And in that respect the total given for 1900, 559,435, is a partial statement of the shipments by the various subsidiaries of the United States Steel Corporation for the several products named?

A. Yes; it is partial, but the statement is very nearly complete.

Q. Almost a complete statement?

A. Almost a complete statement, yes.

Q. I wanted the total ingot capacity first at the Donora plant and then at the South Sharon plant.

A. What date, please?

Q. December, 1902.

A. At that date the ingot capacity at South Sharon was 350,000 tons; at Donora nothing.

Q. On all the furnaces that were under construction or contracted for in 1902 at the Donora plant when completed, what was the capacity?

A. 500,000 tons of ingots per annum. That is in 1905, the early part of 1905.

Q. And what was the capacity of all the open-hearth furnaces in ingots at South Sharon?

A. 475,000 tons in the early part of 1905.

Q. Does that refer to the 24 open-hearth furnaces?

A. It does.

Q. Then there were under construction—were they all under construction—ten of the furnaces at South Sharon were finished and in addition to that there were fourteen under construction either at South Sharon or at Donora?

A. That is correct.

Q. What is the total ingot capacity of all those 24 furnaces when completed?

A. 975,000 tons.

Q. Mr. Filbert, the ingot production of the plant is the total tonnage produced by that plant for rolling into various forms of product, is it not?

A. That is correct, and it is also the case in respect very largely to billets, wire rods, drawn wire, black plate and sheets.

Q. So that when you have tonnage of so many ingots and then tonnage in finished products you are not to add your tonnage of finished products to your billets and slabs?

A. Make that semi-finished products.

Q. Semi-finished products?

A. You should not add those tonnages together for the purpose of getting at a total which will represent the product which the concern or the plants have for sale.

Q. Do you wish to make any further explanation?

A. I would like to.

Q. All right, go ahead.

A. Although I have stated the capacity of the Donora and South Sharon plants for the various classes of products, semi-finished and finished, I would not have it understood that the aggregate of these tonnages represents the product which it had for sale, for the reason as before stated that these tonnages represent the conversion of semi-finished products down through three, four and five stages. The tonnage of Union Steel Company of products which it had for sale on December 1st, 1902, was 494,000 gross tons, and upon the completion of all of the construction work which had been planned at December 1st, 1902, plus the additional capacity represented by new construction undertaken after that date, made the

total capacity on August 1st, 1904, of the Union Steel Company 543,000 tons of finished product for sale.

Q. That is of the Union Steel Company as an entirety, or only of the Donora end of it?

A. Of the Union Steel Company as an entirety, both plants.

Q. What was the total ingot capacity of the Donora and South Sharon plants when all the works that were under construction were completed?

A. Of the two plants?

Q. Of the two plants.

A. 975,000 gross tons.

Q. The finished product capacity upon the completion of all those plants would be what, or was it so equipped that when it was completed, when its capacity was completed, some of it would be sold in the form of semi-finished material?

A. Some of it would be sold in the form of semi-finished material.

Q. In other words the 975,000 tons of semi-finished product might be completed into finished product or some of it might be sold; is that what you mean?

A. The great bulk of it would be completed into finished product, and rather a small proportion would be sold in the form of semi-finished product because its ingot capacity was constructed particularly for the use of the finishing mills at these plants.

Q. Now, of its capacity of 975,000 tons of ingots how much of that was either contracted for or under construction at either or both the Donora and South Sharon plants in 1902?

A. All of it.

Q. All of it was under construction?

A. Yes, sir.

MR. SEVERANCE: We have not any more witnesses.

(Whereupon an adjournment was taken subject to agreement of counsel.)